

CHAPTER 5

REAL ESTATE COMMISSION

Authority

N.J.S.A. 45:15-6, 45:15-10.4, 45:15-16.49, 45:15-17(t) and 45:15-17.4; and P.L. 2009, c. 238.

Source and Effective Date

R.2009 d.287, effective August 27, 2009.
See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 5, Real Estate Commission, expires on August 27, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 5, Real Estate Commission, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 5 expired on August 2, 1983.

Chapter 5, Real Estate Commission, was adopted as new rules by R.1983 d.471, effective November 7, 1983. See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1988 d.555, effective October 28, 1988. See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a).

Subchapter 2, Organizational Rules, was adopted as R.1989 d.258, effective April 19, 1989. See: 21 N.J.R. 1364(a).

Subchapter 3, Petitions for Rulemaking, Subchapter 4, Proceedings before the Commission, and Subchapter 5, Appeals of Initial Denials of Licensing Applications, were adopted as R.1989 d.429, effective August 21, 1989. See: 21 N.J.R. 1315(a), 21 N.J.R. 2524(a).

Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was adopted as R.1990 d.455, effective September 17, 1990. See: 22 N.J.R. 1421(a), 22 N.J.R. 2969(d).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1993 d.552, effective October 15, 1993. See: 25 N.J.R. 3597(b), 25 N.J.R. 5229(a).

Pursuant to Executive Order No. 66(1978), Chapter 5, Real Estate Commission, was readopted as R.1998 d.497, effective September 14, 1998. As a part of R.1998 d.497, effective October 5, 1998, sections 1.1 through 1.44 of Subchapter 1, Rules and Regulations, were recodified as Subchapter 2, Education; Subchapter 3, Licensing; Subchapter 4, Employment Practices/Office and Licensee Supervision; Subchapter 5, Trust Accounts/Records of Brokerage Activity; Subchapter 6, Conduct of Business; Subchapter 7, Prohibited Activities; and Subchapter 8, Disciplinary Actions/Conditions for Restoration of License/Real Estate Guaranty Fund Claims. Also as a part of R.1998 d.497, effective October 5, 1998, Subchapter 2, Organizational Rules, was recodified as Subchapter 1; Subchapter 6, Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., was recodified as Subchapter 9; Subchapter 3, Petitions for Rulemaking, was recodified as Subchapter 10; Subchapter 4, Proceedings before the Commission, was recodified as Subchapter 11, Procedures on Disciplinary Actions, Contested Applications, Declaratory Ruling Requests; and Subchapter 5, Appeals of Initial Denials of Licensing Applications, was recodified as section 11.10. See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Chapter 5, Real Estate Commission, was readopted as R.2004 d.130, effective March 5, 2004. See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

Subchapter 9A, Rules Interpreting and Implementing the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq., was adopted as new rules by R.2009 d.222, effective July 6, 2009. See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).

Chapter 5, Real Estate Commission, was readopted as R.2009 d.287, effective August 27, 2009. See: Source and Effective Date. See, also, section annotations.

Subchapter 12, Continuing Education, was adopted as new rules by R.2011 d.184, effective July 18, 2011. See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

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censing of real estate brokers and salespersons, the regulation of the sale or lease of out-of-state properties to New Jersey residents through promotional activities in New Jersey, the investigation and adjudication of disciplinary actions against licensees, and the administration of the Real Estate Guaranty Fund.

SUBCHAPTER 1. ORGANIZATIONAL RULES

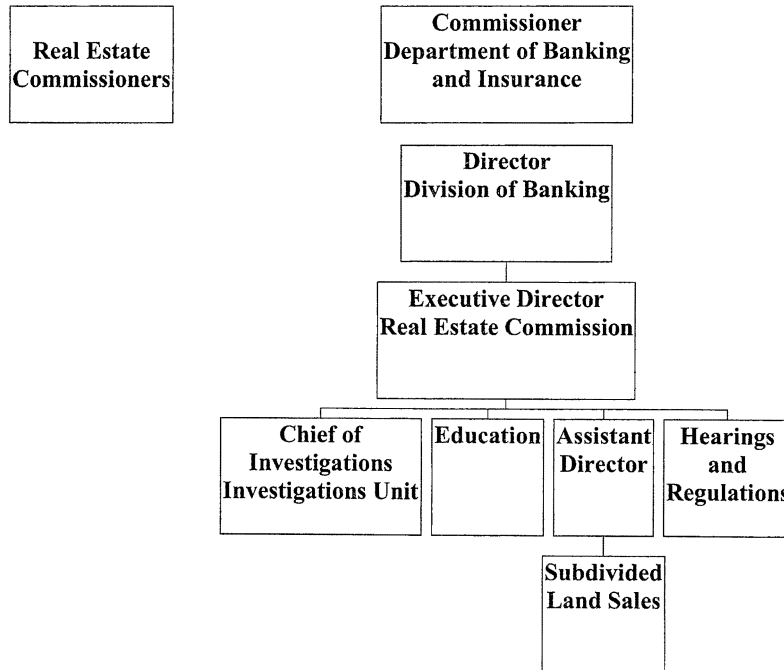
11:5-1.2 Organization of the Commission

11:5-1.1 Commission responsibilities

The organizational chart of the Division of the Real Estate Commission is as follows:

The Real Estate Commission is responsible for the supervision and regulation of the education, examination and li-

Organizational Chart of The New Jersey Real Estate Commission



Amended by R.1989 d.324, effective May 24, 1989.
 See: 21 N.J.R. 1364(a), 21 N.J.R. 1709(a).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 Updated the Commission Organization Chart.
 Amended by R.1999 d.15, effective December 15, 1998.
 See: 31 N.J.R. 544(a).
 Updated the Commission Organization Chart.
 Amended by R.2004 d.130, effective April 5, 2004.
 See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
 Updated the Commission Organization Chart.
 Amended by R.2009 d.287, effective September 21, 2009.
 See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
 In the introductory paragraph, inserted "Division of the"; and amended the Commission Organization Chart.

11:5-1.3 Functions of the Commission

(a) The Commission is comprised of four sections whose functions are as follows:

1. The Investigations Section is responsible for investigating the qualifications of applicants for licensure, and for investigating complaints against licensed brokers or salespersons or individuals who have allegedly engaged in the business of a real estate broker or a salesperson without being licensed to do so.
2. The Real Estate Education Section is responsible for reviewing the qualifications of real estate school and

instructor applicants and for regulating their activities as such through the Education Subsection.

3. The Bureau of Subdivided Land Sales Control is responsible for enforcing the provisions of the New Jersey Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. Its duties include, but are not limited to, reviewing applications for the registration of new projects, conducting inspections of conditionally registered projects, and reviewing applications for the renewal of projects.

4. The Hearings and Regulatory Affairs Section is responsible for processing the rulemaking activity of the Commission, the scheduling and processing of contested cases, the prosecution of certain contested matters, and other functions.

Amended by R.1989 d.324, effective May 24, 1989.
 See: 21 N.J.R. 1709(a).
 At (a)3, reference to Education Subsection added to end of sentence.
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 Rewrote (a).
 Amended by R.2004 d.130, effective April 5, 2004.
 See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
 In (a)4, rewrote the first sentence.
 Amended by R.2009 d.287, effective September 21, 2009.
 See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
 In the introductory paragraph of (a), substituted "four" for "six"; deleted former (a)1 and (a)5; and recodified former (a)2 through (a)4 as (a)1 through (a)3, and former (a)6 as (a)4.

11:5-1.4 Information available to the public

With the exception of the records designated as non-public in N.J.A.C. 11:5-1.5(g), the public may obtain information or make submissions or requests concerning any Commission functions by contacting the Real Estate Commission, Department of Banking and Insurance, PO Box 328, Trenton, New Jersey 08625-0328.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Rewrote the section.
Administrative correction.
See: 36 N.J.R. 4318(a).

11:5-1.5 Commission records open to public inspection; investigative files not open to the public

(a) The New Jersey Real Estate Commission makes, maintains and keeps records as listed in (b) through (g) below.

(b) Current and computerized public licensing records are available at the Commission's office for inspection and copying during normal business hours upon sufficient notice to the Commission staff. The Commission staff may require several weeks notice to locate records other than computerized records. Except as otherwise noted in this section, records are maintained for a minimum of three years. Older records may be unavailable. Copies of records can be purchased from the Commission at the fees established in the Right to Know Law, N.J.S.A. 47:1A-2.

(c) Requests for certified copies of the Commission's public licensing records (or for a certificate of the absence of a public record) shall be submitted in writing and must specify which records are requested and the time period covered by the request. The Commission staff requires at least 10 working days to provide certified copies of public records.

(d) The following records are maintained pursuant to the Real Estate Licensing Act:

1. Certifications of license history and status based upon computerized licensing records;

2. Real estate broker, broker-salesperson, salesperson, school and instructor license applications, and materials submitted therewith to obtain, transfer, reinstate or renew such licenses, and the final disposition of such applications. However, criminal history information obtained by the Commission pursuant to N.J.A.C. 11:5-3.3 and personal data on a licensee such as home address, home telephone number and date of birth are considered confidential;

3. Real Estate Commission meeting minutes;

4. Orders to Show Cause and complaints issued by the Attorney General's office charging that a licensee or an unlicensed person has violated provisions of the Real Estate License Act or the Commission's administrative rules; documents accepted into the agency record in any such proceeding; and the final disposition of such proceedings including settlements; and

5. Notices, proposals and other records concerning rulemaking required to be kept or distributed to the public by the Commission pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-3 and 4 et seq. Complete records of unadopted proposals are available for one year after publication of the proposal. Complete records of adopted rules are available for three years after each rule's effective date.

(e) The following records are maintained by the Bureau of Subdivided Land Sales Control, pursuant to the Real Estate Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.:

1. Statements of record and additions or corrections thereto filed with the Bureau pursuant to N.J.S.A. 45:15-16.33, 16.36, 16.39 and 16.41(a);

2. Annual reports submitted by a subdivider pursuant to N.J.S.A. 45:15-16.40;

3. Public offering statements and amended public offering statements prepared pursuant to N.J.S.A. 45:15-16.38;

4. Orders to Show Cause and other pleadings charging violations of N.J.S.A. 45:15-16.27 et seq. and the final disposition of such orders, including Orders to Cease and Desist and/or imposing penalties or sanctions; documents accepted into the agency record in any such proceedings; and

5. Applications for exemption of a subdivision filed with the Bureau pursuant to N.J.S.A. 45:15-16.32(c) and N.J.A.C. 11:5-9.18 and the final disposition of any such exemption application.

(f) The following records are maintained pursuant to the Real Estate Guaranty Fund Act, N.J.S.A. 45:15-34 et seq.:

1. Court orders for payment from the Real Estate Guaranty Fund; and

2. Pleadings served upon the Commissioner of Insurance or any duly authorized agent or employee of the Department of Insurance pursuant to N.J.S.A. 45:15-39.

(g) The following licensee records are nonpublic in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of indictment for or conviction of a crime;

2. Criminal history records obtained as the result of any criminal history check;

3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified from licensure;

5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken;

7. Personal data on a licensee such as home address, home telephone number and date of birth;

8. The Social Security numbers of any applicants or licensees which were submitted to the Commission on a

license application or otherwise obtained by the Commission; and

9. Purchaser information submitted pursuant to N.J.S.A. 45:15-16.38.

New Rule, R.1994 d.269, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 736(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(b).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (d)2 and (e)5, changed N.J.A.C. references.

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

Added (g)9.

SUBCHAPTER 2. EDUCATION

11:5-2.1 Educational requirements for salespersons and brokers in making application for licensure examination

(a) All applicants for a salesperson's or broker's license shall present with their license application evidence of their satisfactory completion of a course of education in real estate subjects taught in accordance with N.J.S.A. 45:15-10.1 and as required by this section.

1. This requirement shall also apply to disabled veterans making application for licensure pursuant to N.J.S.A. 45:15-11. However, the Commission shall approve a program of studies in real estate completed by such a veteran offered by a provider other than a licensed school if the program consisted of at least 75 hours in the case of an applicant for a salesperson's license, or 225 hours in the case of an applicant for a broker's license and the program was offered by an accredited college or university for credit.

2. No person shall receive credit toward the fulfillment of the salesperson prelicensure education requirement for attendance at a broker's prelicensure course and no person shall receive credit toward the fulfillment of the broker's prelicensure education requirements for attendance at a salesperson's prelicensure course.

(b) To qualify to challenge the real estate salesperson license examination, a candidate must first successfully complete a course of study in real estate at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 consisting of a minimum of 75 hours as specified in (f) below. To qualify to challenge the real estate broker's license exam, a candidate must first successfully complete courses of study in real estate consisting of a minimum of 150 hours as specified in (g) below, offered by a licensed school or, with respect to those certain courses specified in (g)5 below, offered by some other Commission-approved provider.

(c) No person with the exception of qualified disabled veterans shall receive credit for satisfactory completion of

the prescribed 150 hours of broker's courses unless that person was the holder of a salesperson's license at the time of enrollment in said course.

(d) The time allotted by any school for a final examination covering real estate subjects shall be applicable toward the minimum hours of course study. No more than five minutes of each course hour may be utilized for breaks in the actual classroom instruction being conducted at any given session of a pre-licensure course. During the time in which actual classroom instruction is conducted, in addition to covering the substantive material mandated by (f) and (g) below, instructors are to provide thorough instruction on the State license examination and license issuance procedures for salesperson and broker license candidates, as applicable, and to perform all reasonably required administrative functions such as taking attendance and making announcements of general interest.

(e) The requirements that broker license candidates complete the general 90 hour broker prelicensure education course and that salesperson license candidates complete the 75 hour salesperson prelicensure education course shall not apply to:

1. Applicants for licensure as a broker or salesperson who have held a real estate broker's license issued by another state and who were actively engaged in the real estate brokerage business for three years or more immediately preceding the date of application;

2. Applicants for licensure as a broker who are attorneys at law admitted to the practice in the State of New Jersey and applicants for licensure as a salesperson who are attorneys at law admitted to practice in New Jersey or in any other state at the time of making application;

3. Applicants for licensure as a salesperson who have earned a college degree from any accredited institution of higher education, provided that:

i. The total number of college level classroom hours devoted to real estate and related subjects was 75 or more, and such courses were completed within three years of making application;

ii. The applicant received a bachelor or associate degree in real estate regardless of how long prior to their application for a waiver they received that degree; or

iii. The applicant satisfactorily completed 75 or more classroom hours of course work in real estate or related subjects, at least 45 hours of which consisted of instruction on real estate conducted as part of a post-graduate program and that such post-graduate studies were completed within three years of making application.

4. Applicants for licensure as a salesperson who hold or held a real estate license issued by another state, provided that:

i. The applicant has satisfactorily completed a prelicensure course of real estate education at a proprietary school, college or university in that other state;

ii. The prelicensure course was sanctioned by the real estate licensing authority of that state;

iii. The total number of classroom hours included in the course was 75 or more;

iv. The applicant qualified for licensure in that state by examination; and

v. The applicant was actively licensed in that state within three years of applying for the waiver.

5. Applicants for licensure as a salesperson who previously held a license as a New Jersey real estate broker and whose last license expired more than two but less than five years prior to making application.

(f) The salesperson's course of 75 hours shall include:

1. Property rights (9 hours);

2. Contracts and other property instruments (12 hours);

3. Leases and landlord-tenant relations (6 hours);

4. Mortgages and other liens (12 hours);

5. Business opportunity sales (2 hours);

6. The laws of agency (12 hours);

7. Appraising (2 hours);

8. License Act and regulations (9 hours);

9. Other state, Federal and municipal laws and regulations, including N.J.S.A. 17:16C-1 et seq., 39:1-1 et seq., 46:8-43 et seq. and 46:8C-1 et seq. as they pertain to the resale of mobile and manufactured housing units which bear or are required to bear motor vehicle titles (5 hours);

10. Salesperson duties and pitfalls in the real estate business (3 hours);

11. Quizzes and final examination (3 hours).

(g) The 150 hours of prelicensure education required of candidates for licensure as a broker or broker-salesperson by N.J.S.A. 45:15-10 shall be acquired as provided in this subsection. A 90 hour general broker's prelicensure course shall first be completed in accordance with the following syllabus and directives. Thereafter, two 30 hour broker courses as described in (g)5, 6 and 7 below shall be completed. All three courses, totaling 150 hours of instruction, must be successfully completed within a period of two years. Where the three courses are not so completed, a candidate must again successfully complete any previously taken course and all courses not previously taken within the two year time frame, and again fulfill the experience requirement established at N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8 in order to qualify to challenge the broker license examination.

1. The 90 hour general broker's preclicensure course may be taught in blocks or modules of material. The maximum number of modules into which the course may be divided is 23, with their content corresponding to the 23 subject matter areas identified in the syllabus below. Schools offering courses in modules may include more than one subject matter in a given module. No student may commence a course which is offered in modules on a date other than the starting date of any module. No student shall be given credit for the successful completion of a 90 hour general broker's preclicensure course unless and until they have received instruction in all of the subject matter areas identified below for approximately the number of hours indicated, and passed a comprehensive final examination. The 90 hour general broker's preclicensure course shall be conducted in accordance with the following syllabus and directives. Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i. Review license laws and regulations including provisions of the Real Estate Sales Full Disclosure Act and N.J.A.C. 11:5-9 (six hours);

ii. Listing contracts—sales and rentals (three hours);

iii. Sale contracts (three hours);

iv. Deeds and real property rights and interests including nature of ownership, legal description, chain of title, restrictions, consideration, various types, acknowledgments and recording, land and land elements, water rights (including riparian rights), state claims regarding tidelands estates and other interests, methods of ownership, dower and curtesy, wills and descent, adverse possession and fixtures (three hours);

v. Advanced financing techniques including qualification formulae, various types, typical prerequisites (insurance, flood insurance, if applicable, certificate of occupancy, etc.) and income tax ramifications (six hours);

vi. Liens, foreclosures and redemptions (one hour);

vii. Easements, restrictions, etc. (one hour);

viii. Condemnation (one hour);

ix. Zoning, including non-conforming uses, variances, subdivisions, planning, zoning issues raised by condominium construction or conversion and other types of real estate development (five hours);

x. Surveys (non-government type) and legal descriptions (one hour);

xi. Property taxes, assessment, re-valuations, assessment appeals and special appeals (three hours);

xii. Real estate valuation including techniques and distinctions between comparative market analyses and formal appraisals (three hours);

xiii. Settlement/closing procedures, RESPA forms (six hours);

xiv. Mathematics relative to real estate (six hours);

xv. Laws: Federal Fair Housing and the New Jersey Law Against Discrimination, New Jersey "Mount Laurel" requirements, RESPA, Truth in Lending, rent control, New Jersey Land Use Law, New Jersey's Truth in Renting Law, and the provisions in that law, in N.J.S.A. 17:16C-1 et seq., in N.J.S.A. 39:1-1 et seq. and in N.J.S.A. 46:8C-1 et seq. which pertain to the resale of mobile and manufactured housing units which bear or are required to bear motor vehicle titles (total three hours);

xvi. Business and management practices (total of six hours for (g)lxvi(1) through (6) below), including:

(1) Company structure including single ownership, partnership, corporate, requirements to establish, employees vs. independent contractors;

(2) Office management including bookkeeping and accounting relative to real estate, escrow responsibilities, company dollars, ledgers, records and computers;

(3) Personnel management including recruiting, hiring, training, supervising, compensation and termination;

(4) Advertising and promotions;

(5) Community involvement by the company, broker and salespersons; and

(6) Insurance including errors and omissions, etc.

xvii. Principles of agency including ethics and legal liability, disclosure requirements and case studies (six hours);

xviii. Commercial and industrial real estate including small scale, large scale, leasing, financing, site analysis, advertising, remuneration, bulk sales, U.C.C., considerations in franchise transactions, E.C.R.A., BOCA Code, construction financing and other commercial construction concerns (three hours);

xix. Property management including responsibilities and information regarding repairs and maintenance, public relations, collection of rents, government regulations, business trends, personnel, recordkeeping, advertising, etc. (three hours);

xx. Residential real estate development including requirements of New Jersey's Planned Real Estate Development Act including time-sharing, the Home Owner's Warranty program and other concerns regarding single-family and condo/co-op development, conversion, marketing and financing (two hours);

xxi. Leases and landlord/tenant laws including Truth in Renting Law (four hours);

xii. Real estate investments, syndications, REIT's, limited partnerships and S.E.C. licensing requirements (two hours); and

xiii. Income tax considerations and ramifications of various real estate transactions (three hours).

2. Within the 90 hour general broker prelicensure course instruction will also be provided on the following topics for the hours indicated. These topics shall be taught in such a manner as to familiarize students with the basic elements of the listed topics and to impart to students an awareness of their scope and effect. The coverage on these topics will also inform students of the sources which can be contacted in order to obtain additional general information and/or specific data concerning the topics' applicability to or impact upon particular locations, and to educate students on their obligations and responsibilities as licensees to ascertain and disclose such information. The topics to be taught are:

i. Radon contamination, which instruction shall also include testing techniques, remediation techniques and the New Jersey DEP confidentiality statute (one hour);

ii. Ground water contamination, which instruction shall also include testing and remediation techniques (one hour);

iii. Problems posed by a property's proximity to solid waste disposal and/or toxic waste sites (one hour);

iv. Ground water percolation and private sewage disposal systems, which instruction shall also include testing methods (one hour);

v. Problems posed by lands officially designed as Wetlands, Pinelands, or within any other special classifications (one hour); and

vi. New Jersey's Coastal Areas Facilities Review Act (one hour).

3. Instructors conducting 90 hour general broker prelicensure courses shall provide general information to their students concerning the procedures through which students can arrange to sit for the State license examination and through which licenses are issued by the Commission, and shall give at least two spot quizzes and a comprehensive final exam on the material covered in the course (four hours).

4. In addition to classroom instruction and assigned reading from a general textbook, in the 90 hour broker course students shall also be assigned additional outside reading on various topics which shall include, but not be limited to, informational publications of the New Jersey Department of Environmental Protection on the various environmental topics covered, those sections of the New Jersey Law Against Discrimination which directly relate to the activities of real estate professionals, and other topics as directed by the New Jersey Real Estate Commission.

5. After having successfully completed the 90 hour broker course, all candidates for licensure as a broker or broker-salesperson must successfully complete a 30 hour prelicensure course on brokers' ethics and agency law and relationships, and a second 30 hour prelicensure course on office management and related topics.

i. All such agency/ethics and office management courses shall be taught by licensed instructors at licensed schools.

ii. All such agency/ethics courses shall be taught utilizing methods which maximize the use of case studies of recent Commission decisions in disciplinary actions, demonstration models and other non-lecture techniques.

iii. A final examination of not less than one hour shall be administered in all such courses on which students must receive a passing grade in order to be deemed to have successfully completed such courses.

iv. No school shall allow students to commence any 30 hour agency/ethics course or office management course at a time other than the starting date of such courses.

6. The 30 hours of instruction in the ethics/agency course shall be devoted to:

i. The fiduciary duties owed by agents to their principals;

ii. Disclosed and undisclosed dual agency;

iii. Conflicts of interest and self-dealing;

iv. The risks and benefits of sub-agency to the principal and the agent;

v. Restrictions on and disclosure requirements regarding acting for more than one party to a transaction, including those pertaining to licensees providing mortgage services;

vi. Disclosure requirements to non-principals;

vii. Issues raised by licensees involved in transactions as non-agents; and

viii. The obligations to properly qualify or pre-qualify prospective purchasers and related issues.

7. The 30 hours of instruction in the office management and related topics course shall be devoted to:

i. Office management requirements imposed upon supervising brokers of main and branch offices;

ii. Recordkeeping requirements, with particular emphasis upon and extensive coverage of escrow account records;

iii. The importance of adequate supervision and training of other licensees to assure their compliance with the license law and the rules of the Commission;

iv. Instruction on proper qualification and pre-qualification techniques, including requiring demonstrations by the students, and with emphasis upon the significance of training and oversight of other licensees;

v. Statutory and rule requirements pertaining to contracts, leases and listing agreements and to broker advertising;

vi. Closings;

vii. Environmental concerns; and

viii. Instruction on licensure requirements and procedures applicable to license applications, transfers, changes of broker address, branch offices, etc., and office closing requirements.

(h) A complete syllabus for the salesperson and broker courses shall be maintained at the offices of the Real Estate Commission and be open to the public for inspection.

(i) All course hours are suggested and may be modified at the discretion of the director of the approved school subject to written notice to and written approval by the Real Estate Commission.

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1978 d.135, effective April 27, 1978.

See: 10 N.J.R. 163(b), 10 N.J.R. 256(d).

As amended, R.1978 d.271, effective August 2, 1978.

See: 10 N.J.R. 256(b), 10 N.J.R. 399(b).

As amended, R.1979 d.52, effective February 8, 1979.

See: 10 N.J.R. 498(c), 11 N.J.R. 142(b).

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

“Salesman” replaced by “salesperson”; subsection (k) deleted.

As amended, R.1984 d.218, effective June 4, 1984.

See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).

Section substantially amended.

Amended by R.1988 d.411, effective September 6, 1988.

See: 20 N.J.R. 725(b), 20 N.J.R. 2296(a).

Subsections (d) and (e) substantially amended.

Amended by R.1988 d.254, effective June 6, 1988 (operative December 1, 1989).

See: 19 N.J.R. 1051(a), 20 N.J.R. 1205(b).

At (g) old text deleted, new (g) added; brokers pre-licensure syllabus revised.

Notice of Correction, effective May 4, 1992.

See: 24 N.J.R. 1799(a).

Amended by R.1994 d.58, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4852(a), 26 N.J.R. 799(b).

Notice of Correction, effective August 15, 1994.

See: 26 N.J.R. 3442(a).

Amended by R.1997 d.27, effective January 21, 1997.

See: 28 N.J.R. 3065(a), 29 N.J.R. 366(a).

In (f)9, added N.J.S.A. references; in (g)1xv, inserted reference to New Jersey Truth in Renting Law; and inserted N.J.S.A. references.

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (g), changed the N.J.A.C. references throughout and substituted “Real Estate” for “Land” in 1i; and deleted former (j).

Case Notes

Real Estate Commission did not deny real estate sales person due process by failing to notify her that her real estate license had expired.

Coyle v. New Jersey Real Estate Com'n, 280 N.J.Super. 93, 654 A.2d 986 (A.D.1994).

Applicants (real estate salespersons) who were denied relicensure upon their failure to apply for renewal within a two-year period after expiration of their last licenses were not deprived of vested property right in violation of due process by statutory amendment which required school and test for relicensure following a 90-day grace period. *Graham v. N.J. Real Estate Commission*, 217 N.J.Super. 130, 524 A.2d 1321 (App.Div.1987).

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State, New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

11:5-2.2 Licensed schools and instructors; requirements

(a) The following regulations are applicable to schools and instructors licensed to conduct prelicensure courses of education in real estate subjects pursuant to N.J.S.A. 45:15-10.4 and 10.5, to applicants for such licenses and, as applicable, to the conducting of continuing education courses by such schools and instructors pursuant to N.J.A.C. 11:5-12.1.

1. The original license term for pre-licensure course instructors and schools shall begin on July 1, 1994 and terminate on February 28, 1997. Thereafter, each two-year license term for school and instructor licenses shall run from March 1 to the last day of February of the second following year.

(b) The Commission shall require any school or instructor in making application for licensure to submit certain documents, statements and forms which shall form the basis for the Commission's judgment whether to grant a license. Where the Commission initially denies an application for a school or instructor license, it shall provide to the applicant notification in writing with reasons for such action. The applicant may appeal such a decision to the full Commission. N.J.A.C. 11:5-11.10 shall be applicable to all such appeals.

(c) Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the State Department of Higher Education shall be presumed to be qualified providers of real estate courses, so long as their real estate prelicensure education program is under the direction of a licensed instructor or other qualified individual who has affirmatively demonstrated to the Commission his or her good moral character and has met the other requirements of N.J.S.A. 45:15-10.9.

(d) Except as provided in (c) above, all other applicants for a license to operate a real estate prelicensure school, and in the case of a corporation, or limited or general partnership, the members, officers, directors and owners of a controlling interest thereof, shall demonstrate their good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1. The Commission may make such further in-

investigation and require such proof as it deems proper as to the honesty, trustworthiness, character and integrity of an applicant.

(e) When a school is to be conducted in the name of a corporation, a certified copy of its certificate of incorporation shall accompany the application for licensure. When a school is to be conducted under a trade name, whether a sole proprietorship, firm, general partnership, or limited partnership, a true copy of the certificate of trade name or articles of the general or limited partnership as filed in the office of the county clerk shall accompany the application. A school shall not use the designation of "College" or "University," as part of its name or in any other manner, unless it, in fact, meets the standards and qualifications of the State agency having jurisdiction and has been approved by that agency.

(f) Every school licensed by the Commission shall maintain a bona fide office open to the public during normal business hours for the purpose of assisting former and current students. Schools shall provide adequate space, seating, equipment and instructional materials for their students. The premises, equipment and facilities of the school shall comply with all local, city, county and State regulations, such as fire codes, building and sanitation codes. A certificate from a proper authority evidencing compliance with these requirements shall accompany an application for school licensure. The Commission may require proof of ownership or a copy of the lease if the facility is rented. Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the New Jersey Commission on Higher Education, the facilities of which have been approved by a State agency, shall be presumed to have met the requirements of this paragraph, so long as the real estate courses offered are held at the approved facility.

1. Any additional teaching locations must be licensed by the Commission and must comply with all the requirements applicable to licensed schools, their directors and instructors as set forth in the Act and this rule. School directors shall have oversight responsibility for these locations. All prelicensure courses conducted at such locations must be taught by licensed instructors or guest lecturers, pursuant to N.J.S.A. 45:15-10.5 and this rule. All continuing education courses conducted at such locations shall be taught by licensed instructors or by individuals approved as continuing education instructors pursuant to N.J.A.C. 11:5-12.10.

(g) All schools shall furnish to the Commission at the time of application for initial licensure the school policy and regulations pertaining to standards for satisfactory completion of the courses offered at the school and the issuance of a Certificate, conditions for dismissal of a student and conditions for reinstatement.

1. Any changes in school policy and regulations, as set forth in (g) above, from the information submitted with the

original application for school licensure or as otherwise previously supplied, shall be disclosed to the Commission within 10 business days in writing, or on a form which the Commission prescribes.

(h) When a school fulfills all of the requirements for licensure, then a license shall be executed by the President of the Commission as attested by the Executive Director. School licensure shall be limited to the specific ownership and school locations identified on the license document(s).

(i) An individual seeking approval as a director of a licensed real estate school administered by a public adult education program or an accredited college or university who is not licensed as a real estate instructor may nevertheless qualify as the director of such a school, so long as he or she is at least 18 years of age; has a background of good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1; and has fulfilled all of the education requirements imposed upon candidates for licensure as real estate instructors within two years of applying to the Commission for approval to be the director of such a school.

(j) In order to enable the Commission to confirm that courses offered by real estate schools include the required number of hours of instruction as prescribed in N.J.S.A. 45:15-10.1(a) and (b) and N.J.A.C. 11:5-2.1, every six months, each school director shall submit data on courses to be offered by their school in the forthcoming six month period, the starting and ending dates of the courses, the days and hours of class sessions and teaching locations. Such course information shall be provided on forms prescribed by the Commission and shall be retained as permanent records for not less than three years after submission.

(k) No person, other than a guest lecturer, shall teach real estate education courses, the attendance and successful completion of which shall constitute the fulfillment of the educational prerequisites for licensure established under N.J.S.A. 45:15-10.1, unless that person is licensed as an instructor pursuant to N.J.S.A. 45:15-10.5 and this section.

1. Each applicant for licensure as a real estate instructor shall be 18 years of age or older and shall have a background of good moral character, including the absence of any conviction for those certain crimes or other like offenses referred to in N.J.S.A. 45:15-12.1, subject to the applicant's ability to affirmatively demonstrate his or her rehabilitation from such conviction. In order to confirm the absence of any such conviction, the Commission shall require all non-attorney applicants to submit with their application for instructor licensure a New Jersey State Police Request for Criminal History Record Information Form and a certified check or money order in the amount established by the New Jersey State Police as the processing fee for such forms.

2. Each applicant for licensure must hold a bachelor's degree from an accredited college or university, except for the following applicants:

- i. New Jersey licensed brokers who have been continuously licensed as such for the two years immediately preceding their application; and
- ii. Licensed brokers from other states who have been continuously licensed as such for the three years immediately preceding their application.

3. Except as provided in (l)3i and ii below, all instructor license applicants must successfully complete all of the education requirements for licensure as a New Jersey broker established at N.J.A.C. 11:5-2.1, totaling 150 hours, not more than one year prior to passing the instructor license examination and applying for an instructor license.

i. New Jersey broker licensees who have been licensed as such for at least the two years immediately preceding the application and who have completed the full 150 hours of broker prelicensure courses established at N.J.A.C. 11:5-2.1 shall be deemed to have fulfilled the education requirements for licensure as an instructor.

ii. The following individuals will not be required to take the 90-hour general broker course but must successfully complete the two 30-hour broker prelicensure courses referred to in N.J.A.C. 11:5-2.1 in order to fulfill the instructor prelicensure education requirements:

(1) New Jersey broker licensees who have been licensed as such for the two years preceding their application for an instructor license but who have not previously completed those two courses; and

(2) Licensed brokers from other states who have been licensed as such for the three years immediately preceding application.

4. All instructor license applicants shall successfully complete an instructor license examination as established by the Commission. The examination shall extensively test the applicant's general real estate knowledge and shall include questions on teaching methods. Applicants are advised to engage in independent study and/or to take courses offered by independent providers on teaching methods.

5. Subsequent to passing the instructor license examination, as a prerequisite to being issued an instructor license, all applicants must attend a seminar conducted by or under the direction of the Commission staff covering Commission and licensing procedures. Such seminars shall not exceed one day in length.

(l) Regulations applicable to the renewal of school and instruction licenses are as follows:

1. Pursuant to N.J.S.A. 45:15-10.7, the fee for the renewal of a real estate instructor license for an additional

two-year license term shall be \$100.00. The fee for the renewal of a real estate school license shall be \$400.00 for the first teaching location licensed and \$200.00 for each additional licensed location to be renewed.

2. As a prerequisite for the renewal of an instructor license, an instructor must attend a Commission-sponsored seminar updating them on recent developments affecting the real estate brokerage business in New Jersey. Such seminars shall be offered on a minimum of two dates, each in a different location throughout the state, during the second year of each two-year license term. Persons initially licensed as instructors in the last six months of the two-year license term are exempt from this seminar attendance requirement for the first renewal of their instructor license.

3. In the event that any person to whom an instructor's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the Commission shall require such person to again fulfill all the qualifications for initial licensure as an instructor prior to issuance of a further instructor's license. This requirement shall not apply to a person reapplying for an instructor's license who was a licensed instructor and who allowed their license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

(m) For real estate prelicensure courses, the maximum teaching load per instructor or guest lecturer shall not exceed the ratio of one instructor or guest lecturer to 60 students per class. Each prelicensure course offered by a licensed school shall be under the supervision of an instructor licensed pursuant to N.J.S.A. 45:15-10.5 and N.J.A.C. 11:5-2.2(k). At least one licensed instructor shall be present in the classroom at all sessions. However, additional instructors or guest lecturers may be utilized for instruction so long as not more than 25 percent of the required instruction is done by guest lecturers. Broker prelicensure courses may be taught by up to three instructors, provided that one licensed instructor is designated as having the responsibility for the quality of instruction in that course. School directors shall maintain as a business record the names of any persons teaching as guest lecturers or as a group of instructors, with an indication of the designated supervising instructor.

(n) All tuition charged by a school shall be specified separately. If additional fees are to be charged for supplies, materials or books needed in course of work, they shall be itemized by the school prior to the payment of any fees and such items shall become the property of the student upon payment.

(o) The tuition and fees shall be specifically set forth in a student contract. The contract shall expressly state the school's policy regarding the return of unearned tuition when

a student is dismissed or withdraws voluntarily or because of hardship.

(p) Any person who has a permanent disability or physical handicap which precludes that person from attending regular scheduled classes at a licensed school may request Commission approval to receive special instruction through a licensed school provided this request is supported by sworn statements of doctors or other persons having knowledge of the facts and provided a licensed school is willing to undertake such an agreement.

(q) No school shall, without the approval of the Commission, accept for enrollment as a transfer student any person concurrently enrolled with any other licensed school, unless upon the showing of good cause by said student to the Commission in writing.

(r) Any school that offers real estate continuing education courses shall maintain records of licensees' attendance at such courses as prescribed by N.J.A.C. 11:5-12.8. Every school shall permanently establish and maintain for each student enrolled in a prelicensure education course, complete, accurate and detailed records for a period of not less than three years after student matriculation. Such records shall be available for inspection during regular school hours by the Commission and shall contain the following information:

1. The total number of hours of instruction undertaken by the student;
2. Completed areas of study in real estate subjects prescribed by the Act and these regulations;
3. The student's attendance record; and
4. The names of all supervising instructors and guest lecturers.

(s) To satisfactorily complete any prelicensure course, a student must receive a passing grade and attend at least 80 percent of the class session hours required for the course by N.J.A.C. 11:5-2.1.

(t) Upon a student's satisfactory completion of a prelicensure course in real estate, the school shall issue to the student a Course Completion Certificate.

(u) The director of a real estate school shall be responsible for properly closing the school in compliance with this subsection.

1. No later than 10 days after the date on which the school ceases operations, the director shall return the school license, stamp, and all education certificates to the Commission and shall advise the Commission in writing of the date on which the school closed.
2. Within 30 days of the date on which the school ceases operations, the director shall submit an affidavit to the Commission certifying the following:

i. The location where student records are to be kept in compliance with (r) above and the name of the person who is to act as custodian of the records. The Commission shall be notified immediately of any change in such information. Records shall be kept for a period of not less than three years;

ii. The name of the owner or authorized representative of the school and the address where he or she may be contacted by the Commission;

iii. That the school license and school stamp have been returned to the Commission;

iv. That all students have been timely notified of the school closing, and any tuition received by the school for future courses or courses which were not completed has been returned to the students;

v. That all signs have been removed, and all advertisements and trade materials which refer to the school have been recalled;

vi. That the appropriate telephone services have been advised that the school is closed and that future telephone directories should not contain the name of the school; and

vii. That there are no outstanding fees, fines or penalties due and owing the Commission.

(v) No school shall use any name other than the name in which it is licensed for advertising or publicity purposes; nor shall any school advertise or imply that it is "recommended," "endorsed," "accredited," or "approved" by the Commission, but a licensed school may indicate that it has been "licensed" to conduct courses of education in real estate subjects to qualify applicants for licensure examination. No school shall make any warranties or guarantees that a student will pass the State license examination as a result of taking its course.

(w) (Reserved)

(x) The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by licensed schools and any solicitation of students, which, as defined in (x)2ii below, means any recruiting efforts or brokerage activity directed at students. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the offending licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (t). The Commission may also impose sanctions for a violation of these provisions pursuant to N.J.S.A. 45:15-10.11 and N.J.A.C. 11:5-12.15. Requirements regulating the involvement of licensed schools in soliciting students to become salespersons or referral agents for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson prelicensure courses, all licensed schools shall distribute to all students in writing the following:

NOTICE

TO: ALL SALESPERSON COURSE STUDENTS
 FROM: NEW JERSEY REAL ESTATE COMMISSION
 RE: SOLICITATION OF SALESPERSON LICENSE CANDIDATES AT PRELICENSURE SCHOOLS

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join the firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-2.2(x), which is reproduced in its entirety below.

If you are subjected to any recruitment efforts or are solicited for listings or offers during class time you should immediately notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

New Jersey Real Estate Commission
 20 West State Street
 PO Box 328
 Trenton, New Jersey 08625-0328
 Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you. You should also consider a prospective employer's professionalism and reputation for honesty and integrity when deciding which broker to work for.

In the event an enrolled student does not attend the first session of a salespersons course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. For the purposes of this subsection, the following definitions shall apply:

i. The phrase "brokerage activity" means any activity which, pursuant to N.J.S.A. 45:15-1 and 15-3 would require the person engaging in such activity to hold a license as a real estate broker or real estate salesperson;

ii. The term "solicit" means to recruit, invite or urge a student to seek employment with a particular broker, or to list, purchase or lease through, or to make referrals of listing, purchaser or lessee prospects to a particular broker; and

iii. The phrase "successful completion" means the receipt by the student of a Real Estate Commission school certificate form, duly signed by the instructor and the school director and stamped by the licensed school, certifying to the student's having completed and passed a prelicensure course conducted by that school.

3. With the exception of posting, distributing written materials as provided in (x)5 below, no school director, instructor, guest lecturer or staff member shall, prior to, nor within seven days following, a student's successful completion of a course, solicit a student to become a salesperson for any particular real estate broker, nor shall any such person at any time accept any fee or other compensation for soliciting or recruiting students attending

their school to apply for employment with a particular real estate broker.

4. No in-person or electronic solicitation of students to apply for employment as salespersons with a particular real estate broker or any referral program shall be permitted at a licensed school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at licensed schools before, after or separate from the prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to, nor within seven days following, a student's successful completion of a course. Licensed instructors who are also licensed brokers or salespersons may conduct prelicensure courses, and licensees who are not licensed instructors may appear as guest lecturers in such courses, so long as their presentations do not include the solicitation of students.

5. Any licensed school which posts, distributes or displays written material which solicits students to inquire about employment as a salesperson with a particular broker must similarly post, distribute or display comparable written material from any real estate broker who requests the school to do so. However, no written material soliciting students to apply for employment with a particular real estate broker or any referral program shall be distributed during the prescribed class hours.

6. No licensed school may offer a reduced tuition rate to students where eligibility for the lower tuition is contingent upon a student making a commitment to becoming licensed through a particular broker subsequent to their qualifying for licensure and no licensed school may otherwise make or imply any promise or guarantee of employment to any student.

7. No oral statements or written text referring to a licensed school may be included or contained in any advertisement by a real estate licensee, and no advertisement of a licensed school may refer to the brokerage operation or include the telephone number of any licensee except that a school which is owned by a real estate licensee or franchisor may use that name in its school name.

i. Any advertisement by a school whose name includes the name of an affiliated licensed real estate broker or franchisor shall include the following disclosure legend:

Attending this school will not obligate you to become employed with our affiliated real estate broker(s), nor guarantee you an interview or a job with our affiliated real estate broker(s).

ii. No advertisement referring to a licensed school may be placed in the Help Wanted classified section of any newspaper or periodical.

8. No licensed school shall conduct prelicensure course sessions in any area which is part of a location which is licensed as a main or branch office of a real estate broker. For the purposes of this paragraph, an area will be considered as part of a licensed office location if any brokerage activity is conducted in that area at any time.

i. Where space on two or more floors in a multi-story building is licensed as a main or branch office location, it is permissible for prelicensure courses to be conducted in such a building, provided that the primary means of access to and egress from the floor where the courses are conducted does not require the students to walk through any area of the licensed office location wherein brokerage activity occurs.

ii. Where only one floor in a building is licensed as a main or branch office, it is permissible for prelicensure courses to be conducted in another area on that floor, provided that there is a separate entrance to that area either from the exterior of the building or from a common foyer or lobby and provided that the primary means of access to and egress from the area wherein the courses will be conducted does not require students to walk through a portion of the licensed premises wherein brokerage activity takes place.

iii. In all situations where prelicensure courses are conducted in the same building in which brokerage activity occurs under the authority of a broker in any way affiliated with the licensed school conducting such courses, the broker shall post signs either on the exterior of the building or in any common foyer or lobby, directing students either to the separate exterior entrance to the school location or to the primary route of access to the school location from such foyer or lobby.

9. No licensed school shall allow any person to solicit students enrolled in, or considering enrolling in, a prelicensure or continuing education course to list, purchase or lease any property; or for referrals of prospective sellers, purchasers or lessees at any time while such students are on school premises.

(y) Licensed schools providing continuing education courses shall comply with all requirements imposed upon the providers of such courses as set forth in N.J.A.C. 11:5-12.

R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 71(a).

Amended by R.1972 d.150, effective July 27, 1972.

See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

Amended by R.1980 d.441, effective October 10, 1980.

See: 12 N.J.R. 341(a), 12 N.J.R. 665(c).

(e) and (f): New text.

Amended by R.1983, d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Language simplified.

Amended by R.1984, d.218, effective June 4, 1984.

See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).

Section substantially amended.

Amended by R.1986 d.63, effective March 17, 1986.

See: 17 N.J.R. 376(a), 18 N.J.R. 566(b).

(o)-(p) deleted; old (q) recodified to (p) with text added "instructor(s) name and . . . after student matriculation."; (r)-(w) recodified to (q)-(v).

Amended by R.1988 d.409, effective September 6, 1988.

See: 20 N.J.R. 1161(a), 20 N.J.R. 2298(a).

Substantially amended (j) and (k); added new (l) and recodified (l)-(v) as (m)-(w).

Amended by R.1990 d.378, effective August 6, 1990.

See: 22 N.J.R. 777(a), 22 N.J.R. 2323(a).

Added new x.

Amended by R.1993 d.11, effective January 4, 1993.

See: 24 N.J.R. 3488(a), 25 N.J.R. 180(a).

Subsection (e) deleted and reserved.

Amended by R.1994 d.59, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4855(a), 26 N.J.R. 801(a).

Amended by R.1994 d.267, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 730(a), 26 N.J.R. 1194(b), 26 N.J.R. 1222(a), 26 N.J.R. 2581(c).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Changed N.J.A.C. references throughout.

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (g)1, deleted "paragraph" following "set forth in", deleted "promptly" preceding "disclosed to" and inserted "within 10 business days" following "the Commission"; in (n), inserted "prior to the payment of any fees" following "itemized by the school".

Administrative correction.

See: 36 N.J.R. 5365(a).

Amended by R.2011 d.184, effective July 18, 2011.

See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

In the introductory paragraph of (a), inserted "prelicensure" and "and, as applicable, to the conducting of continuing education courses by such schools and instructors pursuant to N.J.A.C. 11:5-12.1", and substituted a comma for "and" following "10.5"; in the introductory paragraph of (f), inserted "a" preceding "proper", and substituted "evidencing compliance with" for "covering" and "New Jersey Commission on" for "State Department of"; in (f)1, inserted "prelicensure" and the last sentence; in (m), substituted "For real estate prelicensure courses, the" for "The"; rewrote the introductory paragraph of (r); in (t), inserted "prelicensure" and "Course Completion"; in the introductory paragraph of (x), inserted "and N.J.A.C. 11:5-12.15" and "or referral agents"; in (x)9, deleted a comma following "person to", and inserted "or continuing education"; and added (y).

11:5-2.3 Applications processed by the Education Bureau of the Real Estate Commission

(a) Applications for the following licenses and approvals are processed by the Education Bureau of the Real Estate Commission:

1. Real Estate Instructor license;
2. Real Estate School license;
3. License for additional teaching location of a licensed real estate school;
4. Approval of Real Estate School Director;
5. Approval of experience report for broker license applicant;
6. Approval of real estate continuing education provider;
7. Approval of real estate continuing education instructor; and

8. Approval of real estate continuing education course.

(b) Applications for the following waivers are processed by the Education Bureau of the Real Estate Commission:

1. Waiver of salesperson prelicensure education requirement;
2. Partial waiver of broker prelicensure education requirement and/or complete waiver of broker experience requirement;
3. Waiver of broker experience and certain prelicensure education requirements based upon status of applicant as a qualifying disabled veteran pursuant to N.J.S.A. 45:15-11; and
4. Waiver of continuing education requirement pursuant to N.J.A.C. 11:5-12.5.

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

Amended by R.2011 d.184, effective July 18, 2011.

See: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

In (a)4, deleted "and" from the end; in (a)5, substituted a semicolon for a period at the end; added (a)6 through (a)8; in (b)2, deleted "and" from the end; in (b)3, substituted "; and" for a period at the end; and added (b)4.

11:5-2.4 Examination eligibility certificates

(a) The Education Bureau issues Certificates of Examination Eligibility to:

1. Broker license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-3.8 and 2.1(e), had waived the broker license experience and/or education requirements;
2. Instructor license candidates who have fulfilled or, to the extent permitted by N.J.A.C. 11:5-2.2(k), had waived the instructor license education requirement; and
3. Salesperson license candidates who, as provided in N.J.A.C. 11:5-2.1(e), have had the salesperson's license education requirement waived.

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

11:5-2.5 Education Bureau forms and processing times

(a) The following forms are utilized by the Education Bureau of the Real Estate Commission:

1. Application for real estate school license for non-public school;
2. Application for licensure of additional teaching location for a non-public real estate school;
3. Application for real estate school license for public college, university or adult education program;
4. Application for real estate instructor license;

5. Application for change in address of administrative office or primary teaching location of non-public real estate prelicensure school;

6. Application for relicensure of public college, university or adult education program with new director;

7. Application for relicensure of non-public school with new director or with new partner(s) (partnership) or new owner(s) of a controlling interest (corporation) or school name change;

8. Application for waiver of salesperson prelicensure education requirement;

9. Application for partial waiver of broker prelicensure education requirement and/or complete waiver of experience requirements;

10. Experience report for Broker License Applicant;

11. New Jersey State Police, State Bureau of Identification Request for Criminal History Record Information Form;

12. Application for approval of real estate continuing education provider;

13. Application for approval of real estate continuing education instructor; and

14. Application for approval of real estate continuing education course.

(b) Following the receipt by the Commission of complete and accurate application forms with the required fee(s) in the correct form, the applications specified below are generally processed by the Education Bureau within the time frames indicated:

1. Applications for real estate instructor licenses, school licenses, and additional teaching location licenses—three weeks;

2. Applications for a change of address of a licensed school—three weeks;

3. Applications for relicensure of schools with new directors or new owners of a controlling interest—three weeks;

4. Applications for renewal of instructor licenses, school licenses, and additional teaching location licenses—four weeks;

5. Applications for waivers of the prelicensure education requirements and/or the broker experience requirement which do not require the review of additional information—four weeks;

6. Applications for the approval of experience as a real estate salesperson to fulfill the experience requirement for licensure as a broker (see N.J.S.A. 45:15-9 and N.J.A.C. 11:5-3.8)—four weeks;

7. Applications for approval of real estate continuing education provider—three weeks after recommendation by the Voluntary Advisory Committee is considered by the Real Estate Commission;

8. Applications for approval of real estate continuing education instructor—three weeks after recommendation by the Voluntary Advisory Committee is considered by the Real Estate Commission;

9. Applications for approval of real estate continuing education course—three weeks after recommendation by the Voluntary Advisory Committee is considered by the Real Estate Commission; and

10. Applications for the issuance of a waiver of the continuing education requirement—three weeks after receipt of a complete waiver application.

New Rule, R.2003 d.440, effective November 3, 2003.
 Sec: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
 Amended by R.2011 d.184, effective July 18, 2011.
 Sec: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

In (a)10, deleted “and” from the end; in (a)11, substituted a semicolon for a period at the end; added (a)12 through (a)14; in (b)5, deleted “and” from the end; in (b)6, substituted a semicolon for a period at the end; and added (b)7 through (b)10.

11:5-2.6 Education Bureau transaction fees

The fees applicable to transactions processed by the Education Bureau of the Real Estate Commission that are unrelated to real estate continuing education are listed in the table below. Fees applicable to applications for approval of real estate continuing education providers, instructors and courses are listed in N.J.A.C. 11:5-12.17.

EDUCATION BUREAU TRANSACTION FEES

<u>Description</u>	<u>Amount</u>
Criminal history check and electronic fingerprint scan	State-contracted vendor fee (paid directly to vendor)
Application fee, school license	\$100.00
Application fee, instructor license	\$50.00
Initial license fee, non-public school	\$400.00 for licenses issued in the first year of a two-year license term; \$200.00 for licenses issued in the second year of a two-year term.
Renewal fee, non-public school	\$400.00 plus \$200.00 for each additional licensed location
License fee, additional teaching location	\$200.00 for licenses issued in the first year of a two-year license term; \$100.00 for licenses issued in the second year of a two-year term.
Change of address (school)	\$50.00

<u>Description</u>	<u>Amount</u>
License fee, instructor	\$200.00 for licenses issued in the first year of a two-year license term; \$100.00 for licenses issued in the second year of a two-year term.
Renewal fee, instructor	\$100.00
Change of name (school)	\$100.00
Change of name for individual	\$50.00
Change of school director	\$50.00
Application fee, waiver of salesperson education	\$25.00
Application fee, waiver of broker education or experience	\$25.00
Application fee, approval of experience report for broker license applicant	\$25.00

New Rule, R.2003 d.440, effective November 3, 2003.
 Sec: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
 Administrative correction.
 Sec: 36 N.J.R. 656(b).
 Amended by R.2009 d.287, effective September 21, 2009.
 Sec: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

In the Education Bureau Transaction Fees table, substituted the entry “Criminal history check and electronic fingerprint scan” for the entry “Criminal history check” and updated the Amount.
 Amended by R.2011 d.184, effective July 18, 2011.
 Sec: 43 N.J.R. 369(a), 43 N.J.R. 1592(a).

In the introductory paragraph, inserted “that are unrelated to real estate continuing education” and the last sentence.

SUBCHAPTER 3. LICENSING

11:5-3.1 Terms of real estate licenses

Commencing July 1, 1997, broker, broker-salesperson, salesperson and branch office licenses shall be issued on the basis of two year license terms. All licenses issued during each biennial term shall run from the date of issuance to the end of the biennial term. All licenses shall expire on June 30 of the second year following the year in which the license term commenced.

New Rule, R.1997 d.159, effective April 7, 1997.
 Sec: 29 N.J.R. 299(a), 29 N.J.R. 1324(b).

11:5-3.2 Payment of fees as prescribed by statute

With the exception of fees paid to the State-contracted fingerprint scanning vendor, fees paid to the license examination administration vendor and fees paid to accomplish an online transfer or termination as set forth in N.J.A.C. 11:5-3.11, any and all fees prescribed by the Real Estate License Act shall be paid by broker’s business account check, certified or bank check or money order payable to the State Treasurer of New Jersey. No cash or currency shall be accepted.

Amended by R.1986 d.92, effective April 7, 1986.

See: 17 N.J.R. 2353(a), 18 N.J.R. 702(a).

Added text, "brokers business account check, certified or bank".

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Rewrote the section.

11:5-3.3 Criminal history record check

(a) The Commission shall require an individual licensee or any officer, director, partner or owner of a controlling interest of a licensed corporation or partnership to complete an electronic fingerprint scan through the State-contracted vendor, pay the fees required for its processing and submit proof of completion of the fingerprint process with their licensing application.

(b) Evidence of completion of the fingerprint scanning process shall include the applicant's copy of the completed fingerprint scanning vendor's form and a copy of the payment receipt issued by the fingerprint scanning vendor at the time of the completion of the fingerprint scanning process.

(c) The applicant, if a natural person, shall submit with his or her application for a salesperson's, broker-salesperson's or broker's license the evidence of completion of the fingerprint scanning process set forth in (b) above.

(d) The applicant, if a corporation or partnership, shall submit with its application for license evidence of completion of the fingerprint scanning process as set forth in (b) above for each officer, director, partner, or owner of a controlling interest.

R.1971 d.83, effective May 27, 1971.

See: 2 N.J.R. 42(e), 3 N.J.R. 110(d).

Amended by R.1976 d.19, effective January 13, 1976.

See: 7 N.J.R. 567(e), 8 N.J.R. 70(e).

Amended by R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Subsections (c) and (e) deleted, recodification.

New Rule, R.1985 d.601, effective November 18, 1985.

See: 17 N.J.R. 2230(a), 17 N.J.R. 2779(a).

Repealed this section dealing with "Fingerprinting" and adopted New Rule.

Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

Repeal and New Rule, R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Section was "Criminal history record check".

11:5-3.4 Examination rules

(a) In the administration of examinations for licensure as a real estate broker, broker-salesperson or salesperson, the following examination rules shall apply:

1. Examinees shall not be permitted to refer to any notes, books, or memoranda.

2. The copying of questions or making of notes for personal use is strictly prohibited.

3. No examinee shall leave the examining room except at the discretion of the examiner.

4. The real estate broker license and salesperson license examinations, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, broker-salesperson or salesperson license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged applicants to take the real estate examinations and for fingerprinting shall be considered service fees to be paid directly to the testing service and fingerprint scanning vendor separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the Commission at the time of the license application.

(b) A request for special accommodations may be made if the applicant qualifies for such accommodations as provided in the Americans With Disabilities Act or any other applicable law. Such requests shall initially be made to the firm administering the licensing examinations. The Commission shall retain final authority to determine whether such requests shall be granted.

As amended, R.1972 d.168, effective August 26, 1972.

See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

As amended, R.1973 d.43, effective February 5, 1973.
 See: 5 N.J.R. 13(b), 5 N.J.R. 86(b).
 As amended, R.1973 d.306, effective October 25, 1973.
 See: 5 N.J.R. 350(a), 5 N.J.R. 338(a).
 As amended, R.1983 d.471, effective November 7, 1983.
 See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
 "Salesman" replaced by "salesperson".
 Amended by R.1995 d.23, effective January 17, 1995.
 See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 Rewrote (b).
 Amended by R.2009 d.287, effective September 21, 2009.
 See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).
 In (a)4, inserted "and for fingerprinting scanning" and "and fingerprint scanning vendor".

11:5-3.5 Requests for disclosure of social security numbers

(a) The Commission may request that licensees and license applicants, including registrants for license examinations, submit their social security numbers to the Commission. All such requests shall either include or be accompanied by a notice stating:

1. The purpose or purposes for which the Commission intends to use the social security numbers;
2. That disclosure made pursuant to the request is either voluntary or mandatory; and
3. That the request is authorized by this section and by such other law as may be applicable.

New Rule, R.1994 d.268, effective June 20, 1994 (operative July 1, 1994).
 See: 26 N.J.R. 735(a), 26 N.J.R. 1222(a), 26 N.J.R. 2585(a).
 Repeal and New Rule, R.1997 d.160, effective April 7, 1997.
 See: 29 N.J.R. 302(a), 29 N.J.R. 1324(c).
 Section was "Collection of Social Security numbers of licenses".

11:5-3.6 Salesperson's license; age requirement

(a) No salesperson's license shall be issued to any person who has not attained the age of 18 years.

(b) Every applicant for licensure as a salesperson shall present with his/her application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.1(a) and 10.4 and N.J.A.C. 11:5-2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2.

(c) An applicant must pass the State salesperson examination and apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the course prescribed at N.J.A.C. 11:5-2.1. Any person who fails to apply for the issuance of a salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) All applicants for licensure as a salesperson shall certify that they possess a high school education or equiv-

alency. The Commission may require the production of evidence of such education or equivalency as a condition to issuing a license to any applicant.

As amended, R.1973 d.214, effective August 2, 1973.
 See: 5 N.J.R. 228(f), 5 N.J.R. 316(a).
 As amended, R.1974 d.307, effective November 13, 1974.
 See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).
 As amended, R.1981 d.261, effective July 9, 1981.
 See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).
 (b) "On or after September 1, 1967" deleted; "for licensure as a salesman" added.
 (d) added.
 As amended, R.1983 d.471, effective November 7, 1983.
 See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
 "Salesman" changed to "salesperson".
 As amended, R.1984 d.218, effective June 4, 1984.
 See: 16 N.J.R. 489(a), 16 N.J.R. 1352(a).
 New subsections (d) through (f) added.
 Amended by R.1995 d.23, effective January 17, 1995.
 See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 In (b) and (c), changed N.J.S.A. and N.J.A.C. references; rewrote (d); and deleted former (e) through (f).
 Amended by R.2004 d.130, effective April 5, 2004.
 See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
 In (c), inserted "pass the State salesperson examination and" following "An applicant must" in the first sentence.

11:5-3.7 Employment of salesperson sponsored by broker

No broker shall knowingly sponsor an applicant for licensure as a real estate salesperson who does not bear a good reputation for honesty and fair dealings.

As amended, R.1983 d.471, effective November 7, 1983.
 See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
 "Salesman" replaced by "salesperson".
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 Rewrote (a); and deleted former (b).

11:5-3.8 Qualifications for licensing; broker and broker-salesperson

(a) All references in this section to "brokers" shall include broker-salespersons. The experience requirement for licensure as a broker imposed by N.J.S.A. 45:15-9 is construed to require a demonstration by the applicant of their commitment to real estate brokerage as their primary vocation, as evidenced by their involvement in the real estate brokerage business on a full-time basis.

1. A person who is presently licensed as a broker in another state and who has been actively licensed and engaged in the real estate brokerage business on a full time basis as a broker, broker-salesperson or salesperson for at least three years immediately preceding the date of application shall qualify for a waiver of the experience requirement for licensure as a New Jersey real estate broker.

2. With the exception of persons licensed as brokers in other states, all applicants for licensure as a broker must have been continuously licensed and employed on a full-

time basis as a real estate salesperson during the three years immediately preceding their application. Such full-time employment shall be demonstrated by a showing that:

- i. The applicant has worked as a salesperson under the authority of the broker(s) with whom they were licensed for at least 40 hours per week and during the hours of approximately 10:00 A.M. to 8:00 P.M.;
- ii. Such work in (a)2i above was performed during any five days in each week of the three-year period; and
- iii. If the applicant was employed in any other occupation during the three year period, such other employment was on a part-time basis and did not exceed 25 hours per calendar week.

3. No applications for approval of an applicant's experience to qualify for licensure as a broker shall be made until an applicant:

- i. Has been continuously licensed as a salesperson for at least the three years immediately preceding such application;
- ii. Has completed the 90-hour general broker's prelicensure course and the two 30-hour courses referred to in N.J.A.C. 11:5-2.1(g).

(b) The Commission shall give due consideration to the following in reviewing the experience of an applicant:

1. Evidence of having been actively involved in the real estate brokerage business as a real estate salesperson on a full-time basis during each year of the three year period. Written statements by the brokers with whom the applicant was licensed during the three year period which certify the applicant's activity as a salesperson while licensed through those brokers must be submitted.

2. Applicants and/or brokers may also be required to submit supporting documentation relating to the closed transactions on which the applicant received compensation as a salesperson from the broker, or to supply other evidence of full-time activity, such as extensive involvement in a specialized field of real estate brokerage.

3. In no event will an applicant whose brokerage activity was limited to solely making referrals to other licensees be deemed to have fulfilled the full-time, active involvement in the brokerage business requirement for licensure.

(c) Broker-salespersons shall meet the same qualifications as brokers, including the qualifications as set forth in (a) and (b) above. A person licensed as a broker-salesperson must be employed by and act under the supervision of a duly licensed real estate broker and shall not independently maintain an office or escrow account. A broker-salesperson may be authorized to serve as an office supervisor or a branch office in accordance with the provisions of N.J.S.A. 45:15-12.

(d) Every applicant for licensure as a broker or broker-salesperson shall present with his or her application for licen-

sure examination a certificate of satisfactory completion of courses in real estate and related subjects at a school licensed by the Commission or offered by another approved provider pursuant to N.J.S.A. 45:15-10.1(b) and N.J.A.C. 11:5-2.1 and 2.2, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2 and N.J.A.C. 11:5-2.1.

(e) An applicant must pass the State broker license examination and apply for and request the issuance of a license as a broker or broker-salesperson not later than one year after successful completion of the 150-hour broker prelicensure education requirements. Any person who fails to apply for the issuance of a license as a broker or broker-salesperson within the said one year time period shall be required to retake and successfully complete all prescribed courses and the examination and must submit evidence of having again fulfilled the experience requirement during the three years immediately preceding the new application.

As amended, R.1972 d.150, effective July 27, 1972.

See: 4 N.J.R. 160(d), 4 N.J.R. 190(a).

As amended, R.1974 d.307, effective November 13, 1974.

See: 6 N.J.R. 246(c), 6 N.J.R. 478(e).

As amended, R.1981 d.261, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

Substantially amended.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Former subsections (a) and (f) deleted, recodified, "salesman" changed to "salesperson".

Amended by R.1987 d.68, effective January 20, 1987.

See: 18 N.J.R. 1782(a), 19 N.J.R. 232(a).

Deleted text in (a) "full-time during his apprenticeship as a salesperson" and added text "on a full ... per calendar week."

Amended by R.1994 d.56, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4849(b), 26 N.J.R. 798(a).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a)2ii and (d), changed N.J.A.C. references.

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Added a new (a)1; recodified former (a)1 and (a)2 as (a)2 and (a)3; and in (a)2ii, substituted "(a)2i" for "(a)1i" and inserted a hyphen following "three".

Case Notes

Regulation requiring applicants for licensure as brokers to be actively engaged on a full-time basis in brokerage business was reasonable, valid and authorized implementation of statutory purpose of Real Estate Licensing Act; purpose of the regulation was to ensure that real estate brokers possessed experience not only in sale and lease of real estate, but also in day-to-day operation of brokerage business, and in industry in which many salespersons worked part-time, regulation was recognition that full-time commitment insured protection to the public. In re Pipes, 329 N.J.Super. 391, 748 A.2d 118 (N.J.Super.A.D. 2000).

Real estate salesman was not authorized to sue to collect commission to which employer may have been entitled. Harper-Lawrence, Inc. v. United Merchants and Mfrs., Inc., 261 N.J.Super. 554, 619 A.2d 623 (A.D.1993), certification denied 134 N.J. 478, 634 A.2d 525.

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. Spirito v. State, New Jersey Real Estate Commission, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

Unlicensed real estate business must cease and desist engaging in real estate brokerage activity. *New Jersey Real Estate Commission v. Goldstar Capital, Inc.*, 97 N.J.A.R.2d (REC) 35.

11:5-3.9 Return of license when broker ceases to be active; office closing; change of broker of record

(a) Each broker who ceases to be active shall within five business days of the cessation of business return to the Commission his license, and the licenses of all salespersons and broker-salespersons for cancellation.

(b) Each employee's license must be accompanied by a letter terminating employment in compliance with N.J.S.A. 45:15-14.

(c) No broker engaging in the real estate brokerage business as a sole proprietor, as a broker of record of a partnership or as a broker of record of a corporation shall be relicensed as broker or salesperson unless within 30 days of the date of which the broker ceases engaging in the real estate brokerage business he or she shall complete and submit an affidavit to the Commission certifying that:

1. The broker's license, the corporate or partnership license, and the licenses of all salespersons and broker-salespersons have been returned to the Commission for cancellation;

2. The broker's trust account has been closed and that all funds held in trust for others have been disbursed to proper parties;

3. All commissions owed to salespersons and broker-salespersons have been paid, or, if not yet received by the broker, will be paid upon receipt;

4. No further commissions are due the broker except that any commissions for services previously rendered and payable in the future upon the occurrence of specified events are described on a list attached to the affidavit. The list shall describe the nature and amounts of such outstanding commissions with sufficient information to identify each transaction;

5. The broker has notified all principals in ongoing transactions, in writing, that the broker has ceased engaging in the real estate brokerage business or that the broker will hereinafter engage in the real estate brokerage business in another capacity. The notice shall describe the disposition of pending transactions and the name of custodian and place of deposit of any funds received from principals;

6. The broker has removed from the licensed premises all signs indicating that the premises contains the office of a licensed real estate broker;

7. The broker has recalled all signs and other advertisements or trade materials indicating that the broker is engaged in the real estate brokerage business;

8. The broker has advised the appropriate telephone services that the firm is no longer engaged in the real estate brokerage business, and that further telephone directories should not contain the name of the individual or firm as licensed brokers;

9. There are no outstanding fines or penalties due and owing the Real Estate Commission;

10. The broker acknowledges his or her responsibility to maintain records as required in N.J.A.C. 11:5-5.4. The broker must provide the address of the place of depository of such records and acknowledge responsibility to advise the Commission of any change in the name of the custodian or place of depository for a period of six years.

(d) When a new broker of record of a corporation or partnership is being substituted for the existing broker of record, the existing broker of record satisfies the certification requirements of (c) above when in compliance with the substitution procedures of (e) below.

(e) No new broker of record of a corporation or partnership shall be substituted unless the new broker of record and the former broker of record prepare and submit a joint affidavit to the Commissioner certifying that:

1. Custody of all funds held in trust for principals has been assumed by the new broker of record;

2. The new broker of record has reviewed all pending transactions and is satisfied that all funds held in trust have been accounted for;

3. All salespersons' commissions are paid to date;

4. The new broker acknowledges responsibility to pay salespersons' commissions in accordance with the policy for payment existing on the date of substitution;

5. No fines are presently owed to the Real Estate Commission, and if any fines are assessed after the date of substitution for actions occurring prior to substitution, both the former broker and new broker are jointly and severally responsible for payment;

6. All signs and advertisements have been changed to reflect the broker now authorized to transact business in the name of the firm;

7. All records required to be maintained pursuant to N.J.A.C. 11:5-5.4 have been turned over to the new broker, and the new broker acknowledges responsibility to maintain such records for a period of six years;

8. The new broker acknowledges that he or she will be responsible to transact business in the name and on behalf of the firm.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

"Salesman" changed to "salesperson", language simplified.

Amended by R.1985 d.186, effective April 15, 1985.

See: 16 N.J.R. 2228(b), 17 N.J.R. 970(b).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (c), changed N.J.A.C. reference and deleted "permanent type" following "maintain" in 10; and in (e), changed N.J.A.C. reference in 7.

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (a), substituted "within five business days of the cessation of business" for "immediately".

11:5-3.10 Sponsoring of license applications or transfers of license

(a) The New Jersey Real Estate Commission, Department of Insurance, hereby grants to brokers of record or employing brokers the right to have initial applications for licenses of salespersons or broker-salespersons who will be in their employ sponsored by one other person, other than the authorized broker of record or employing broker. This other person must be the holder of a broker's license and an officer of the broker of record's corporation or a member of his or her partnership, as the case may be. In the event the employing broker is a sole proprietor, such a designee shall be licensed as a broker-salesperson in the employ of the employing broker. The broker of record or employing broker, as applicable, shall file with the New Jersey Real Estate Commission a power of attorney granting this authority to the designated person at least 10 days prior to delegating performance of the function of that person.

(b) Any employing broker or broker of record may authorize one individual in their employ to sign and surrender to the Real Estate Commission, in accordance with the requirements of N.J.S.A. 45:15-14, the real estate salesperson or broker-salesperson license of any licensee whose employment relationship with that employing broker or broker of record is terminated. The employing broker or broker of record shall, on a form to be provided by the Commission, notify the Commission in writing of the designation of the employee so authorized, which person need not be the holder of a real estate license. The form designating the authorized person shall be filed with the Real Estate Commission at least 10 days prior to delegating performance of the function of that person. The employing broker or broker of record shall immediately notify the Real Estate Commission in writing in the event that, for any reason, the authority of the person so designated to perform that function is revoked, and shall indicate whether a new designee is to be named. Only the employing broker or broker of record and one other person duly designated and identified to the Real Estate Commission as provided in this section may perform the said license transfer functions at any one time.

R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 71(a).

Amended by R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

"Salesman" replaced by "salesperson".

Amended by R.1987 d.119, effective March 2, 1987.

See: 18 N.J.R. 2418(a), 19 N.J.R. 409(b).

Substantially amended.

11:5-3.11 License transfer and termination procedures

(a) For the purpose of expediting the right of licensees to engage in real estate activities, where license certificates cannot be issued without delay after all conditions have been fulfilled, the Commission directs that a certificate of authority in the form of a letter to the licensee be sent to serve as a temporary license for a limited period of time.

(b) In cases where a licensee who is transferring from one broker to another requests that their current broker deliver their license to them, rather than return it to the Commission, so as to personally facilitate the transfer process, the license shall be so delivered, provided that:

1. The rear of the license certificate is signed and dated by the terminating broker in the appropriate location prior to the delivery of the license to the departing licensee;

2. At the time of the delivery of the license to the departing licensee, the termination confirmation section of the license, reflecting the effective date of the licensee's separation from that broker, has been completed, signed and retained by the terminating broker; and

3. Within five business days of the delivery of the license to the departing licensee, the terminating broker shall either:
 - i. Mail to the Commission the completed and signed termination confirmation section of the license and send a copy of it to the departing licensee at their last known residence address; or
 - ii. Process the termination online at <http://www.state.nj.us/dobi> and send a copy of the completed and signed termination confirmation section of the license to the departing licensee at their last known residence address.

(c) A transferring licensee who receives their license from the terminating broker after that broker has signed the license and entered the date of termination on it may then take that license to their new employing broker. Prior to the transferring person commencing work as a licensee for the new employing broker, that broker shall:

1. Enter on the license in the appropriate location the effective date of the individual's employment with that broker and sign the license as the new employing broker;

2. Detach the temporary license stub portion from the main license document and place it with the licenses of the other persons licensed with that broker; and

3. Either mail to the Commission the dated and signed license of the transferring individual with the required transfer fee (see N.J.S.A. 45:15-14) in the form of a certified or cashier's check or money order or broker's business account check (See N.J.A.C. 11:5-3.2) or process the transfer online at <http://www.state.nj.us/dobi> and pay the required transfer fee in the form of an electronic check

or credit card and retain the paper license signed by the broker, with the effective date of the transferring individual's employment with their firm entered thereon, as a business record as set forth in (f) below.

(d) In cases where a broker terminates the employment of a broker-salesperson or salesperson with his or her firm or where a broker-salesperson or salesperson resigns such employment, written notice specifying the effective date of the termination or resignation shall be provided by the terminating broker or by the resigning licensee, as applicable. Within five business days of the broker's issuance of a notice of termination or receipt of a resignation, if the licensee has not requested the delivery of the license to them so as to personally facilitate a transfer of their license to another broker, the broker shall either:

1. Deliver or mail to the Commission the licensee's license; or
2. Process the termination online at <http://www.state.nj.us/dobi>; and
3. Regardless of whether the procedure in (d)1 or 2 above is utilized, contemporaneously send to the licensee at their last known residence address written notice of the license having been returned to the Commission or of the termination of the licensee's employment with the broker having been processed online.

(e) The following regulations pertain to online transfers and terminations:

1. Only salesperson or broker-salesperson licenses can be transferred or terminated online;
2. All terminations and transfers shall be completed by an active broker of record or an active employing broker;
3. A broker of record or employing broker shall not process an online termination or transfer on their own license; and
4. Online transfers are not allowed unless the license of a salesperson or broker-salesperson has been terminated by the broker of record or employing broker under whose supervision the transferring individual was licensed to engage in brokerage activity prior to the termination.

(f) Brokers who terminate licensees or accomplish the transfer of licensees to their firms as set forth in this section shall maintain records of such terminations and transfers for six years.

R.1972 d.127, effective June 28, 1972.

See: 4 N.J.R. 17(a).

Amended by R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Reference to a letter and its contents was deleted.

Amended by R.1994 d.60, effective February 7, 1994 (operative July 1, 1994).

See: 25 N.J.R. 4858(a), 26 N.J.R. 803(a).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (c), changed N.J.A.C. reference in 3.

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Section was "Expediting of license issuance and transfer procedures". In the introductory paragraph of (b), substituted "personally facilitate" for "expedite"; rewrote (b)3 and (c)3; and added (d), (e) and (f).

11:5-3.12 License applications processed by the Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau

(a) Applications for the following license types are processed by the Department of Banking and Insurance Licensing Services Bureau, Real Estate Section:

1. Real Estate Salesperson;
2. Real Estate Broker—Salesperson;
3. Real Estate Broker—Sole Proprietor;
4. Real Estate Broker—Business entity;
5. Real Estate Broker—Broker of Record of a licensed business entity; and
6. Branch office.

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Section was "License applications processed by the Licensing Section of the Real Estate Commission". In the introductory paragraph of (a), substituted "Department of Banking and Insurance Licensing Services Bureau, Real Estate Section" for "Licensing Section of the Real Estate Commission".

11:5-3.13 Licensing Services Bureau, Real Estate Section forms, instructions, processing times, deadlines

(a) The following forms are utilized by the Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau:

1. Original salesperson license application;
2. Original broker/broker-salesperson application;
3. Name change (by license or application);
4. Broker status change;
5. Salesperson or broker-salesperson transfer of license (on rear of license document);
6. Broker's Authorized Designee or Power of Attorney;
7. Change of business address;
8. Application for broker license for business entity (includes application for broker of record license);
9. Application for sole proprietor broker license;
10. Application for reactivation within current license term or for reinstatement of salesperson license;

11. Application for reactivation within current license term or for reinstatement of broker-salesperson license;

12. Office Closing affidavit;

13. Application for branch office license;

14. Change of branch office supervisor;

15. Initial Application for Renewal of Broker License and of all related licenses;

16. First Supplemental Renewal Application (lists licensees who became licensed with the broker between the date on which the Initial Renewal Application form was generated and the date on which the First Supplemental Renewal Application form was generated);

17. Second Supplemental Renewal Application (lists licensees who became licensed with the broker between the date on which the First Supplemental Renewal Application form was generated and the expiration date of the license term in which the renewal forms are generated);

18. Change of corporate representative and multiple license;

19. Change of broker of record;

20. Change of corporate title;

21. Corporate license and multiple broker license;

22. Reinstatement of business entity broker license;

23. Reinstatement of sole proprietor broker license;

24. Additional broker of record license to sole proprietor broker;

25. Change of tradename or new tradename;

26. Multiple broker of record license;

27. Temporary broker's license;

28. Change of Broker of Record Affidavit;

29. Individual irrevocable consent to service of process;

30. Corporate irrevocable consent to service of process;

31. Partnership/LLC/other irrevocable consent to service of process; and

32. The form to request fingerprint scan processing utilized by the State-contracted fingerprint scanning vendor.

(b) In addition to the instructions that are contained on the forms themselves, separate instructions for the licensing forms related to broker licenses and branch offices are available from the Licensing Services Bureau, Real Estate Section.

(c) License applications are normally processed within 15 business days from the date a complete and accurate application with all required fees in the correct form is received. Processing times during the biennial renewal of licenses may vary. License certifications are normally processed within 15

business days from receipt of the written request and correct fee.

(d) Deadlines for the submission of license applications and other required forms are as follows:

1. Original salesperson, broker-salesperson or broker: one year from date on which prelicensure course and education requirements were completed (see N.J.A.C. 11:5-3.6(c) for salespersons and 11:5-3.8(e) for brokers and broker-salespersons);

2. Applications for the reinstatement of a salesperson, broker-salesperson or brokers license: two years from the expiration date of the last license held unless exempted as provided in N.J.S.A. 45:15-9;

3. Brokerage firm office closing affidavit: within 30 business days from date of closing (see N.J.A.C. 11:5-3.9(c));

4. Brokerage firm change of address: prior to or immediately upon move to new address (see N.J.S.A. 45:15-12 and 45:15-13);

5. Temporary broker license: within 30 business days from date of death or of incapacity of sole proprietor broker or broker of record (see N.J.S.A. 45:15-11.3); and

6. License renewals:

i. Initial renewal application: by June 30 of the year in which the license is due to expire (see N.J.A.C. 11:5-3.1);

ii. First supplemental renewal application: 45 days from date application issued; and

iii. Second supplemental renewal application: 30 days from date application issued.

(e) Late fees are assessed for license renewals postmarked and received by the Commission after the deadlines referenced in (d)6 above. Those fees are set forth in N.J.A.C. 11:5-3.14.

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

Section was "Licensing Section forms, instructions, processing times, deadlines". In the introductory paragraph of (a), substituted "Real Estate Section of the Department of Banking and Insurance Licensing Services Bureau" for "Licensing Section of the Real Estate Commission"; rewrote (a)32; and in (b), inserted "Services Bureau, Real Estate".

11:5-3.14 Licensing fees

The fees applicable to transactions processed by the Department of Banking and Insurance Licensing Services Bureau, Real Estate Section are listed in the table below. Renewal fees are assessed biennially for the renewal of licenses for a two-year term pursuant to N.J.S.A. 45:15-15. All other fees are payable in full regardless of when during a license term the application to which the fee pertains is submitted.

LICENSE FEES

Initial License Fees (amounts include \$50.00 application fee and, where applicable, Real Estate Guaranty Fund fees of \$10.00 for salespersons and \$20.00 for brokers and broker-salespersons. See N.J.S.A. 45:15-35. Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor):

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$270.00
Broker of record	\$270.00
Sole proprietor broker	\$270.00
Broker-salesperson	\$270.00
Salesperson	\$160.00
Branch office	\$150.00
Temporary broker license	\$300.00

Renewal Fees:

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$200.00
Broker of record	\$200.00
Sole proprietor broker	\$200.00
Broker-salesperson	\$200.00
Salesperson	\$100.00
Branch office	\$100.00

Late Renewal Fees:

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$ 40.00
Broker	\$ 40.00
Broker-salesperson	\$ 20.00
Salesperson	\$ 20.00

Transfers:

<u>License</u>	<u>Fee</u>
Broker-salesperson	\$ 25.00
Salesperson	\$ 25.00

Reinstatements of unexpired licenses (amounts include \$50.00 application fee):

<u>License</u>	<u>Fee</u>
Corporations, partnerships and other business entities	\$250.00
Broker of record	\$250.00
Sole proprietor broker	\$250.00
Broker-salesperson	\$250.00
Salesperson	\$150.00
Branch office	\$150.00

Changes:

<u>Type</u>	<u>Fee</u>
Name change	\$ 50.00
Change of business address: sole proprietor brokers and corporations, partnerships or other business entities (plus \$10.00 for each individual licensee)	\$ 50.00
Change of status—sole proprietor, broker, broker of record or broker-salesperson	\$ 50.00
Change of branch office supervisor	\$ 50.00

New Rule, R.2003 d.440, effective November 3, 2003.

See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).

Administrative correction.

See: 36 N.J.R. 656(b).

Amended by R.2009 d.287, effective September 21, 2009.

See: 41 N.J.R. 1381(a), 41 N.J.R. 3440(a).

In the introductory paragraph, substituted "Department of Banking and Insurance Licensing Services Bureau, Real Estate Section" for "Licensing Section of the Real Estate Commission"; in the paragraph below "LICENSE FEES", deleted ", \$18.00 criminal history record check fee for each individual required by N.J.A.C. 11:5-3.3 to undergo such a check" following "application fee", and inserted "Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor"; and in the "Initial License Fees" portion of the table, updated the Fee amounts for entries "Broker of record", "Sole proprietor broker", "Broker-salesperson", "Salesperson", "Branch office" and "Temporary broker license" and deleted the entry for "Multiple broker license"; and in the "Late Renewal Fees" portion of the table, deleted the entry for "Branch office".

**SUBCHAPTER 4. EMPLOYMENT
PRACTICES/OFFICE AND LICENSEE
SUPERVISION**

**11:5-4.1 Employment agreements; commissions;
accounting to salespersons; actions for collection
of compensation**

(a) No salesperson may commence operations as such for a broker and no broker may authorize a salesperson to act as such on his or her behalf until a written agreement as provided in this subsection has been signed by the broker and salesperson. Prior to an individual's commencement of activity as a salesperson under the authority of a broker, the broker and salesperson shall both sign a written agreement which recites the terms under which the services of the salesperson have been retained by the broker. Such terms shall include, but need not be limited to, the following:

1. The rate of compensation to be paid to the salesperson during his or her affiliation with the broker;

2. A promise by the broker to pay to the salesperson his or her portion of commissions earned within 10 business days of their receipt by the broker or as soon thereafter as such funds have cleared the broker's bank, or in accordance with another payment schedule explicitly set forth in the employment agreement;

3. The rate of compensation payable to the salesperson on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's affiliation with the broker; and

4. A provision that any future changes to the agreement will not be binding unless the changes are contained in a writing signed by both parties.

(b) A copy of the fully executed agreement shall be provided to the salesperson upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-5.5.

(c) All compensation paid to brokers shall, unless debited from funds held in escrow in accordance with N.J.A.C. 11:5-5.1(d), be deposited into the general business account of the broker within five business days of their receipt by the broker.

(d) In the event that any monies due a salesperson under the terms of the written agreement with their broker are not paid within 10 business days of the broker's receipt of such funds or promptly thereafter upon their having cleared the broker's account, the broker shall provide to the salesperson a complete and comprehensive written explanation of the failure to pay such monies.

(e) Upon the termination of the affiliation of a salesperson with a broker, the broker shall make a complete accounting in writing of all monies due the salesperson as of

the date of termination and/or which may become due in the future. In the event any sums so accounted for are not in accord with the terms of the post-termination compensation clause in the written agreement between the broker and the salesperson, the broker shall give a complete and comprehensive written explanation of any difference to the salesperson with the accounting. Such accounting shall be delivered to the salesperson not later than 30 days after termination.

(f) Copies of all written agreements as described in (a) above, of all written explanations of the failure to pay compensation due a salesperson on a timely basis as described in (e) above, and of all accountings and written explanations regarding compensation due a salesperson subsequent to the termination of their affiliation with a broker as described in (f) above shall be maintained by the broker, with adequate proof of the delivery of the same to the salesperson, for a period of six years.

(g) In situations where the Commission confirms that a broker has complied with all of the requirements imposed by this section, the Commission will not further investigate a complaint alleging the non-payment of a commission by a broker to a salesperson unless such complaint is accompanied by a copy of an arbitration decision or the equivalent, or a copy of a judgment of a court of competent jurisdiction secured by the salesperson against the broker. Unless appealed, the failure by a broker to pay monies awarded to a salesperson under the terms of any such decision or judgment within 30 days of its effective date shall subject the broker to sanctions pursuant to N.J.S.A. 45:15-17.

(h) Broker and salesperson licensees may only bring or maintain actions in the courts of New Jersey for the payment of compensation due them for brokerage services performed as provided in N.J.S.A. 45:15-3.

1. The Commission interprets the language "at the time the alleged cause of action arose" as used in N.J.S.A. 45:15-3 to mean at the time that the brokerage services which form the basis for the alleged claim to compensation were rendered. For example, at the time when a property was listed for sale or rental by a licensee.

2. The Commission does not interpret the language "at the time the alleged cause or action arose" as requiring that the licensee must have been actively licensed at the time that the compensation allegedly due was to have been paid. For example, the Commission does not construe this language as requiring licensure at the time of the renewal of a lease to enable a claimant to sue for compensation based upon a promise, made or in effect when the lease was originally executed, to pay additional consideration to the claimant in the event that the lease was renewed.

(i) All references to "salesperson" in this section shall be construed to also include individuals licensed as broker-salespersons. All references to "non-payment of a commis-

sion" in this section shall be construed to include the non-payment of other forms of compensation.

As amended, R.1976 d.254, eff. August 16, 1976.

See: 8 N.J.R. 336(b), 8 N.J.R. 422(a).

As amended, R.1983 d.471, eff. November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

"Salesman" replaced by "salesperson".

Amended by R.1989 d.424, effective August 21, 1989 (operative November 19, 1989).

See: 21 N.J.R. 1308(b), 21 N.J.R. 2519(a).

Language entirely deleted and replaced with more detailed requirements including essential provisions which must be included in all contracts between brokers and salespersons.

Amended by R.1994 d.57, effective February 7, 1994.

See: 25 N.J.R. 4851(a), 26 N.J.R. 799(a).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a), rewrote 2; deleted former (c); recodified former (d) through (j) as (c) through (i); and changed N.J.A.C. references throughout.

Case Notes

Real Estate Commission regulation is reasonable interpretation of statute governing actions for recovery of real estate commissions, which requires that claimant be duly authorized real estate broker at time commission was earned. *Prestia Realty Inc. V. Hartz Mountain Industries, Inc.*, 303 N.J.Super. 140, 696 A.2d 95 (N.J.Super.A.D. 1997).

Regulation stating that real estate broker suing for commissions must have been duly licensed when broker performed all necessary brokerage services does not require broker to be licensed at time of closing. *Atlantic Commercial Group, Inc. v. Dunham*, 303 N.J.Super. 122, 696 A.2d 85 (N.J.Super.A.D. 1997).

Issues of fact precluded summary judgment on issue whether claimed agent was an employee of real estate agency for purposes of wrongful discharge claim. *MacDougall v. Weichert*, 144 N.J. 380, 677 A.2d 162 (1996).

Commingling of funds, accounting failures, as well as other violations, warranted permanent revocation of broker/salesperson license and imposition of fine. *New Jersey Real Estate Commission v. Duffy*, 93 N.J.A.R.2d (REC) 13.

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker's license, suspension of salesperson's license, and assessment of fine. *New Jersey Real Estate Commission v. Woods*. 92 N.J.A.R.2d (REC) 25.

Failing to maintain as separate funds monies held as escrow agent, and other violations, warranted revocation of broker's license and assessment of fine. *New Jersey Real Estate Commission v. Brown*. 92 N.J.A.R.2d (REC) 21.

11:5-4.2 Broker supervision and oversight of individual licensees, office operations and escrowed monies

(a) The following apply to individual broker licensees operating as sole proprietors (employing brokers) or as the authorized broker (broker of record) of a corporation or other entity licensed as a New Jersey real estate broker. As used in this section, the term "individual broker" shall refer to employing brokers and brokers of record and the term "broker licensee" shall refer to sole proprietors and corporations or other entities licensed as brokers.

1. The Commission will hold responsible individual brokers for any actions of the broker licensee or any person employed by or licensed through the broker licensee taken in the pursuit of its real estate brokerage business which violate any of the provisions of the real estate license law, N.J.S.A. 45:15-1 et seq., or the regulations promulgated thereunder.

i. This responsibility shall apply regardless of where the persons licensed through the broker licensee engage in actions in pursuit of the broker licensee's real estate brokerage business.

2. Every real estate transaction in which a broker licensee participates as a broker shall be under the ultimate supervision of the individual broker.

3. The individual broker shall, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the broker licensee, make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to brokers licensed as broker-salespersons.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Subsections (a) and (c) deleted; subsection (b) recodified as (a).

Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

Amended by R.1998 d.246, effective May 18, 1998.

See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).

Rewrote (a).

11:5-4.3 Use of license for the benefit of others

(a) No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented.

(b) Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. For the purposes of this section, personal oversight and direction of the business shall be construed as requiring the broker to be physically present in the main office or branch office locations of the business at least one day each week (excluding vacations and emergencies). Communication via telephone and/or mail alone for an extended period of time may be considered by the Commission as evidence of prohibited license lending.

(c) Nothing in this section shall be construed to limit a broker's responsibility to insure the adequate supervision of all offices in accordance with the requirements of N.J.A.C. 11:5-4.4 and 4.5.

As amended, R.1982 d.101, effective April 5, 1982.

See: 13 N.J.R. 302(b), 14 N.J.R. 345(b).

Deleted existing text of (b) and added new (b) through (b)2.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Amended by R.1989 d.426, effective August 21, 1989 (operative November 19, 1989).

See: 20 N.J.R. 2184(a), 20 N.J.R. 3019(a), 21 N.J.R. 1311(a), 21 N.J.R. 2522(a).

Established the minimum amount of personal contact which brokers must maintain with their offices and salespeople, deleted (b) and added new (b) and (c).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (c), changed N.J.A.C. references.

11:5-4.4 Maintained offices

(a) Every resident real estate broker not licensed as a broker-salesperson shall maintain a main office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. This main office and the activities of the licensees working from it shall be under the direct supervision of either the broker himself or herself, or of a person licensed as a broker-salesperson. Such supervision shall be maintained on a full time basis. Maintaining full-time supervision shall not be construed as requiring the person performing the supervisory functions to be present at the office location continuously during usual business hours. However, the person performing the supervisory functions shall provide sufficient information so as to allow the personnel at the main office to make communication with that person at all times. Further, the licensee supervising the main office shall be so employed on a full-time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week (excluding vacations and emergencies) and shall not be otherwise employed during such time.

1. In the event the main office of a broker is under the direct supervision of a broker-salesperson, the broker who maintains such a main office shall be ultimately responsi-

ble for all activities conducted by licensees and employees. Such a broker shall also provide sufficient information to the personnel at such offices so as to allow them to make communication with such broker at all times. Nothing in this section shall be construed to limit a broker's responsibility to comply with the requirements of N.J.A.C. 11:5-4.3.

(b) If such office is located in a residence, it shall be independent of living quarters and shall have a separate exterior entrance plainly visible from the street upon which the licensed premises shall have frontage. This subsection shall not apply to offices in existence prior to December 1, 1963.

(c) No broker's maintained place or places of business shall be in the dwelling premises of any salesperson in that broker's employ.

(d) Sole proprietor employing brokers and persons licensed as a broker of record for a licensed entity are responsible to supervise, track and oversee the brokerage activity of persons licensed under their authority regardless of where such activity takes place.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

"Salesman" replaced by "salesperson".

Amended by R.1989 d.427, effective August 21, 1989 (operative November 19, 1989).

See: 20 N.J.R. 1160(a), 21 N.J.R. 1312(b), 21 N.J.R. 2523(a).

Clarification obligation of brokers of record to supervise their main office on a full time basis and unusual business hours, added to (a) and new (a)1.

Amended by R.1998 d.246, effective May 18, 1998.

See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).

Inserted a new (d).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a)1, changed N.J.A.C. reference.

Case Notes

Regulation of the New Jersey real estate commission which states holders of reciprocal licenses for non-resident brokers are not permitted to maintain offices in New Jersey is invalid as there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey which is under the direct, full-time supervision of a competent New Jersey licensee. Atty.Gen. F.O.1977, No. 14.

11:5-4.5 Branch office compliance with N.J.A.C. 11:5-4.4 (Maintained offices)

(a) In the event a real estate broker maintains a branch office or offices, every such place of business shall comply with the provisions of N.J.A.C. 11:5-4.4 (Maintained offices).

(b) No license shall be issued for a branch office situated in the dwelling premises of a salesperson or broker-salesperson.

(c) Any branch office shall be under the direct supervision of a licensed broker employed as a broker salesperson by the broker maintaining the branch office.

(d) Such individual shall devote his or her full time to management of said office during the usual business hours.

(e) The name of the individual responsible for the supervision of the branch office shall be recorded at all times with the Commission.

(f) When a branch office license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other broker-salespersons and the salespersons doing business at that branch office.

(g) The said branch office license shall be returned for cancellation or correction upon the change of an "office supervisor".

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Correct N.J.A.C. citations added.

Amended by R.1985 d.187, effective April 15, 1985.

See: 16 N.J.R. 2228(a), 17 N.J.R. 970(a).

(f): Substantially amended.

Amended by R.1989 d.428, effective August 21, 1989 (operative February 21, 1990).

See: 21 N.J.R. 1313(a), 21 N.J.R. 2523(a).

Required that branch offices be supervised by broker-salespersons.

Amended by R.1995 d.23, effective January 17, 1995.

See: 26 N.J.R. 3111(a), 27 N.J.R. 370(a).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a), changed the N.J.A.C. reference and deleted "of this subchapter" from the end.

Case Notes

Regulation of the New Jersey real estate commission which states holders of reciprocal licenses for non-resident brokers are not permitted to maintain offices in New Jersey is invalid as there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey which is under the direct, full-time supervision of a competent New Jersey licensee. Atty.Gen. F.O.1977, No. 14.

SUBCHAPTER 5. TRUST ACCOUNTS/RECORDS OF BROKERAGE ACTIVITY

11:5-5.1 Special accounts for funds of others; commingling

(a) Every resident real estate broker shall establish and maintain, in an authorized financial institution in New Jersey, and every reciprocally licensed Real Estate broker shall establish and maintain in an authorized financial institution in New Jersey or the State wherein he has a resident real estate broker's license, a special account or special accounts, separate and apart from other business or personal accounts, for the deposit of all moneys or others received by the broker acting in said capacity, or as escrow agent, or as temporary custodian, in a real estate transaction.

(b) Every real estate broker shall file with the broker's application for licensure or license renewal an affidavit or certificate setting forth the name or names of the financial institution or institutions where said special account or accounts have been established and shall identify any and all account numbers. Any change in an existing account or the establishment of any new account shall be immediately reported to the Real Estate Commission in the form of an affidavit or certification.

(c) In construing N.J.S.A. 45:15-17(o), the following shall be considered to constitute commingling by a licensee:

1. Mingling the money of his principals with his own;
2. Failure to maintain and deposit promptly in a special account in an authorized financial institution, separate and apart from personal or other business accounts, all moneys received by a real estate broker acting in said capacity, or as escrow agent, or as the temporary custodian of the funds of others in a real estate transaction; or
3. Failure to promptly segregate any moneys received which are to be held for the benefit of others.

(d) Where the nature of a given real estate transaction is such that the commissions earned by a broker in connection with services rendered in said transaction are included among the funds deposited to the broker's trust account, the portion of such funds deposited to the broker's trust account which constitute the broker's commission shall be promptly paid from the trust account, with appropriate annotations to the broker's business records to indicate the amount and source of such commissions; provided, however, that such broker shall have been previously authorized to make such disbursement.

(e) Within the meaning of this section, the word "promptly" means not more than five business days next following the receipt of the money or property of another. However, where monies are received by a licensee as provided in (c)2 above as a good faith or earnest money deposit accompanying an offer to buy or lease property, if during the five business day period next following the date of the licensee's receipt of those funds the offer is withdrawn prior to acceptance by the offeree or is rejected with no counter-offer made by the offeree, the licensee need not deposit those funds into an escrow or trust account but may, upon the request of the offerer, return them in the same form in which they were received to the offerer. In all other cases, the licensee must deposit such monies within five business days of receipt. Examples of such cases include transactions where negotiations are ongoing, or if a contract or lease is being reviewed by an attorney, or if subsequently to the rejection of an offer the offerer has requested the licensee to retain the monies in the event that the offerer determines to submit another offer on the same or a different property.

Case Notes

Fraud and failure to comply with record-keeping requirements warrant license revocation and imposition of fines. *New Jersey Real Estate Commission v. Tumolo and Rossell*, 97 N.J.A.R.2d (REC) 1.

Revocation of real estate broker's license was justified. *New Jersey Real Estate Commission v. Roth*, 94 N.J.A.R.2d (REC) 17.

Commingling of funds, accounting failures, as well as other violations, warranted permanent revocation of broker/salesperson license and imposition of fine. *New Jersey Real Estate Commission v. Duffy*, 93 N.J.A.R.2d (REC) 13.

Commingling of funds, making misrepresentations to investigator, as well as other violations, warranted revocation of broker's license and imposition of fine. *New Jersey Real Estate Commission v. Eberhardt*. 92 N.J.A.R.2d (REC) 53.

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker's license, suspension of salesperson's license, and assessment of fine. *New Jersey Real Estate Commission v. Woods*. 92 N.J.A.R.2d (REC) 25.

Failing to maintain as separate funds monies held as escrow agent, and other violations, warranted revocation of broker's license and assessment of fine. *New Jersey Real Estate Commission v. Brown*. 92 N.J.A.R.2d (REC) 21.

11:5-5.5 Inspection of records

(a) Every licensee shall make available for inspection by the Commission or its designated representatives all records of transactions, books of account, instruments, documents and forms utilized or maintained by such licensee in the conduct of the licensed business, which may be pertinent to the conduct of the investigation of any specific complaint.

(b) To accomplish the objectives and carry out the duties prescribed by this Act, especially the provisions of N.J.S.A. 45:15-17, the Commission may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-5.4.

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Language citing statute deleted in subsection (a).

Amended by R.1988 d.410, effective September 6, 1988.

See: 20 N.J.R. 883(a), 20 N.J.R. 2295(a).

Added (c).

Petition for Rulemaking: Upon termination from employment with a broker, no salesperson or broker salesperson may remove files from the office pertaining to sale or rental listings.

See: 23 N.J.R. 1968(e).

Public Notice: Petition to amend subsection (c).

See: 23 N.J.R. 2191(b).

Amended by R.1992 d.107, effective March 2, 1992.

See: 23 N.J.R. 3428(a), 23 N.J.R. 3739(a), 24 N.J.R. 852(b).

Meaning of "files" specified at (c).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (b), deleted ", in addition to other powers conferred upon it by the Act" following "Commission"; and in (c), changed N.J.A.C. reference.

Case Notes

Real estate licensing law exemption for attorneys held only to authorize attorneys to sell or rent real estate incidental to their normal practice of law; denial of broker's license to attorney who did not meet statutory apprenticeship and testing requirements upheld. *Spirito v. State*, *New Jersey Real Estate Commission*, 180 N.J.Super. 180, 434 A.2d 623 (App.Div.1981).

SUBCHAPTER 6. CONDUCT OF BUSINESS

11:5-6.1 Advertising rules

(a) Unless otherwise set forth herein, subsections (b) through (o) below shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationery, business cards, business and legal forms and documents, and signs and billboards.

1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".

2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the individual licensed as their broker of record and the words "Licensed Real Estate Broker".

(b) All advertising of any licensed individual, partnership, firm, or corporate broker shall include their regular business name which for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is on record with the Commission as doing business as a real estate broker. All advertising by a salesperson or broker-salesperson shall include the name in which they are licensed and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. If such advertisements contain a reference to the licensed status of the person placing the ad, their status as a salesperson or broker-salesperson must be indicated through inclusion of a descriptive term as provided in (e) below. A salesperson may not indicate in any advertisement or otherwise that he or she is licensed as a broker-salesperson.

1. In all advertisements which contain the name of a salesperson or broker-salesperson the regular business name of the individual, partnership, firm or corporate broker through whom that person is licensed shall appear

in larger print or be displayed in a more prominent manner than the name of the salesperson or broker-salesperson.

2. Where a webpage on the worldwide web established by a salesperson, a broker-salesperson, or a team of such licensees is not linked electronically to the webpage of the broker through whom the person or team is licensed, the webpage shall display the telephone number and may display the street address of the licensed brokerage office from which the individual or team operates as real estate licensees. That information shall appear in wording as large as the predominant size wording on the webpage.

3. Where a webpage of an individual or team is linked electronically to the webpage of the broker through whom such person or persons are licensed, the webpage of the nonbroker licensee(s) shall display information which clearly indicates how to link to the broker. That information shall appear in wording as large as the predominant size wording on the webpage.

(c) All advertising, with the exception of lawn signs placed on residential properties containing four or fewer units, shall clearly indicate after the licensee's regular business name that the advertising licensee is engaged in the real estate brokerage business. Except as prescribed by N.J.S.A. 45:15-17(j), examples of permissible language shall include, but are not limited to, "Realtor," "Realtist," "real estate broker," "broker," or "real estate agency". Examples of prohibited language when used alone shall include, but are not limited to, "realty," "real estate," "land sales," and "land investments." This provision shall not apply when the word "agency" appears in the advertisement as part of the licensee's regular business name or when the licensee has legal or equitable ownership of the property.

(d) Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or E-mail address of an individual salesperson or broker-salesperson, or a team of such licensees, shall also include the telephone number and may include the street address of the licensed brokerage office from which the advertising licensee(s) operate. All such advertising shall also contain language identifying each number included in the advertising. For example, a home telephone number may be followed or preceded by the word "home" or the abbreviation "res."

1. No advertising shall represent that a location is a place at which the business of a real estate licensee is conducted unless that location is the licensed main office or a licensed branch office of the broker through whom the advertising licensee is licensed. Salespersons and broker-salespersons shall not include in their advertisements any reference to a "home office."

(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtist associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of the words broker-associate, associate broker, realtor-associate or broker-salesperson. The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.

(f) Any advertising which refers to amounts of down payment, monthly payment, or carrying charges, or which indicates that a mortgage is obtainable (where the mortgage referred to is not already a lien against the premises advertised), shall contain the words "to a qualified buyer".

(g) Any advertisement which sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as "approximate" or "estimated," which qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned the broker shall maintain written proof of the validity of these statements in the broker's files. Such written proof shall be maintained for a period of 12 months from the date upon which an advertisement containing such references shall have last appeared in any publication.

(h) With the exception of magazine or newspaper advertisements published under municipality headings, any advertisement for the sale, exchange or rental of real property, or any interest therein, shall designate the geographical area containing that property by specifying the municipality within which that property is located.

(i) No licensed individual, limited or general partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, color, sex, affectional or sexual orientation, marital status, national origin, ancestry or as to whether a person is handicapped as that term is defined in N.J.A.C. 11:5-6.4(h).

(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or other public utterance, either by a single licensee or any group of licensees, which suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provision of N.J.S.A. 45:1-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association.

1. The foregoing shall not apply to the displays which, pursuant to N.J.S.A. 45:15-12, are required to conspicuously appear on the exterior of every place of business maintained by New Jersey real estate brokers and to include the name of the broker and, in the case of business entities licensed as brokers, the name of the individual licensed as its authorized broker, and the words "Licensed Real Estate Broker."

(q) Any advertisement which includes any reference to a commission rate or compensation amount charged by the advertising licensee's brokerage firm or by one or more other brokerage firms shall also include the following statement: "In New Jersey commissions are negotiable." The said statement shall be included in the advertisement in a clear and conspicuous manner.

(r) No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.

As amended, R.1976 d.276, effective August 31, 1976.

See: 8 N.J.R. 387(a), 8 N.J.R. 482(a).

As amended, R.1977 d.84, effective March 10, 1977.

See: 9 N.J.R. 91(d), 9 N.J.R. 178(a).

As amended, R.1978 d.42, effective January 31, 1978.

See: 9 N.J.R. 534(c), 10 N.J.R. 116(c).

As amended, R.1979 d.461, effective November 26, 1979.

See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).

As amended, R.1980 d.52, effective January 31, 1980.

See: 12 N.J.R. 44(a), 12 N.J.R. 128(a).

As amended, R.1980 d.213, effective May 14, 1980.

See: 12 N.J.R. 44(a), 12 N.J.R. 343(a).

As amended, R.1980 d.279, effective June 26, 1980.

See: 12 N.J.R. 340(b), 12 N.J.R. 484(d).

As amended, R.1983 d.471, effective November 7, 1983.

See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Time limits on compliance deleted.

As amended, R.1986 d.91, effective April 7, 1986.

See: 17 N.J.R. 666(a), 18 N.J.R. 699(a).

(m)3.-5. deleted.

Amended by R.1987 d.69, effective January 20, 1987.

See: 18 N.J.R. 1679(a), 19 N.J.R. 232(b).

Amended (d) and (e).

Petition: Notice of Action upon petition for Declaratory Ruling and/or Rulemaking limiting the scope of Advertising Rules.

See: 19 N.J.R. 570(d), 19 N.J.R. 664(a).

Amended by R.1988 d.237, effective June 6, 1988.

See: 20 N.J.R. 497(a), 20 N.J.R. 1205(a).

Substantially amended subsection (j).

Amended by R.1989 d.447, effective August 21, 1989.

See: 21 N.J.R. 1312(a), 21 N.J.R. 2552(b).

Exempted residential lawn sign advertisement for properties of four or fewer units, corrected spelling of realtor and added new (n) regarding consent of exclusive listing broker.

Amended by R.1993 d.9, effective January 4, 1993 (operative May 4, 1993).

See: 24 N.J.R. 3484(a), 25 N.J.R. 178(b).

Requirements for signs, cards, etc. amended to show name of broker, identified as such.

Amended by R.1994 d.266, effective June 20, 1994 (operative July 1, 1994).

See: 26 N.J.R. 729(a), 26 N.J.R. 1194(a), 26 N.J.R. 1222(a), 26 N.J.R. 2581(b).

Amended by R.1997 d.26, effective January 21, 1997.

See: 28 N.J.R. 3064(a), 29 N.J.R. 365(a).

In (l), inserted reference to the seller regarding warranty payment; in (m)2, inserted reference to informational or educational; and added (m)2i.

Amended by R.1998 d.246, effective May 18, 1998.

See: 30 N.J.R. 278(a), 30 N.J.R. 1827(a).

In (a), inserted "all electronic media including E-mail and the Internet," in the introductory paragraph; in (b), added new 1 through 3; rewrote (d); and in (m), substituted "certified or licensed appraiser" for "specialist or expert" in the introductory paragraph, added ", and coupons offering discounts on commissions charged by brokerage firms" at the end of 1i, and inserted a new 1ii.

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (g), deleted "without qualification," following "mentioned" in the second sentence; and in (i), changed N.J.A.C. reference.

Amended by R.2000 d.223, effective June 19, 2000 (operative September 17, 2000).

See: 31 N.J.R. 2678(a), 32 N.J.R. 2242(b).

In (n), added 1.

Amended by R.2001 d.236, effective July 16, 2001 (operative October 15, 2001).

See: 32 N.J.R. 2205(a), 33 N.J.R. 2532(a).

In (a), substituted "(o)" for "(n)"; in (b)1, substituted "In" for "With the exception of business cards, in"; in (d), substituted "Any" for "With the exception of business cards, any" in the introductory paragraph; in (g), deleted "unqualified" preceding "references shall"; added (o).

Amended by R.2002 d.346, effective November 4, 2002 (operative February 2, 2003).

See: 33 N.J.R. 3620(a), 34 N.J.R. 3832(a).

Rewrote the section.

Amended by R.2004 d.130, effective April 5, 2004.

See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).

In (e), substituted "the words broker-associate, associate broker, realtor-associate or" for "any of the aforementioned words or by the use of" in the second sentence.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

Barring real estate broker's merchandise coupon program pursuant to statute was not improper regulation of competition. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).*

Statute prohibiting real estate brokers from using promotions involving "prizes" did not deprive broker that wished to use merchandise coupon program of property without due process. *Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Com'n, 242 N.J.Super. 354, 576 A.2d 938 (A.D.1990).*

Website offering 1% Cash-Back Bonus on the purchase of a home presented incomplete and misleading information where the prospective client was lulled into assuming that the bonus was available from all sellers and payable at closing, when in fact payment of the bonus to some clients might be made at some undefined future date (adopting 2009 N.J. AGEN LEXIS 502). *N.J. Real Estate Comm'n v. Tonge, OAL Dkt. No. BKI 08380-08, 2009 N.J. AGEN LEXIS 740, Final Decision (September 16, 2009).*

Commingling trust monies and failing to maintain separate account for escrow funds, as well as other violations, warranted revocation of broker's license, suspension of salesperson's license, and assessment of fine. *New Jersey Real Estate Commission v. Woods, 92 N.J.A.R.2d (REC) 25.*

11:5-6.2 Contracts of sale, leases and listing agreements

(a) The following paragraphs specify licensees' obligations to obtain written confirmation of the intentions of, and to deliver copies of documents to, parties to a real estate transaction.

1. Where a licensee memorializes the terms of an offer or counter-offer on a writing which will itself become an "instrument" as defined in (a)3 below, the licensee shall deliver to the maker of such an offer or counter-offer a clear copy of the executed offer or counter-offer immediately upon its being signed, and initialed if necessary as

provided in this section, by the maker of the offer or counter-offer. Any addition, deletion, or other change in any such offer or counter-offer shall be initialed by the party proposing such a revision and, if accepted, by the other party to the transaction.

2. Where a licensee records the terms of an offer or counter-offer on a writing which is not intended to be binding upon either party, and which so states on its face, in the event that the licensee secures the signature and/or initials of any party on such a writing, the licensee shall provide to the signing and/or initialing party a clear copy of the writing as signed and/or initialed by them.

(e) Every licensee subject to this section shall verify the continuing availability of the rental unit with the lessor or agent as follows:

1. All units advertised in media shall be verified each day the advertisement appears; and
2. All units to which prospective tenants are referred shall be verified as available every three working days.

(f) In the event a diligent effort by the licensee to verify availability of the rental unit is unsuccessful because of a failure of a lessor or agent to respond, the prospective tenant shall be specifically advised of the date and time the unit was last verified as available.

1. Every prospective tenant shall upon request be advised of the date and time any particular unit was last verified as available.
2. No licensee subject to this section shall refer a prospective tenant to any rental unit not verified as available within the previous seven calendar days.

(g) Every licensee subject to this section shall maintain sufficient telephone lines and staff to receive and answer inquiries from contract consumers.

(h) Prior to the prospective tenant obtaining rental property through the services of the licensee, no licensee shall charge or accept a fee in excess of \$25.00 unless:

1. Any fee charged, collected or received in excess of \$25.00 is deposited promptly in the broker's escrow account until the services described by the contract are fully performed; or
2. The licensee posts with an approved escrow agent cash security in an amount approved by the Commission, based upon the following criteria:
 - i. The rental referral fees;
 - ii. The volume of rental referral business of the licensee;
 - iii. The duration of the rental referral contract; and
 - iv. The prior performance of the licensee or its principals in the rental referral business.

(i) Any licensee subject to this section shall maintain for one year the following records:

1. Written consent or written confirmation of oral consent of a lessor or agent to refer prospective tenants;
2. Records of the verification of availability of rental units as set forth in (e) above; and
3. Copies of contracts with prospective tenants.

(j) Every licensee subject to this section shall prominently post a copy of this regulation in its office for the information of its customers, and provide customers a copy upon request.

Repealed by R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).

Section was "Rental location and operations".
New Rule, R.1985 d.93, effective March 4, 1985.

See: 16 N.J.R. 2952(a), 17 N.J.R. 600(a).
Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (b), deleted an address at the end of 6.

Case Notes

Rule governing rental location licenses held valid against challenges of unlawful rate-making by the Commission, arbitrary nature and confiscatory effect (citing former rule). In re N.J.A.C. 11:5-1.32, 179 N.J.Super. 294, 431 A.2d 855 (App.Div.1981).

11:5-6.6 Participation in trade associations or listing services

(a) No licensed individual, partnership, firm or corporation shall become a member of or otherwise participate in the activities or operation of any trade association or organization or of any multiple listing service operation which engages in the following policies and practices:

1. Places requirements, obligations, or standards upon licensed members or participants which conflict with the Real Estate License Act, N.J.S.A. 45:15-1 et seq., the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or which otherwise relate to the comprehensive scheme of regulation already preempted by the State of New Jersey.

2. Interferes with the licensee's obligation of fidelity to his client's interests, his obligation of dealing fairly with all other parties in a transaction, or his obligation of fully cooperating with any other New Jersey licensee, as more fully set forth in N.J.A.C. 11:5-6.4;

3. Directly or indirectly imposes or attempts to impose prescribed or predetermined fees or commission rates or commission amounts, or prescribed or predetermined commission splits, between the listing broker and the selling broker.

Amended by R.1979 d.461, effective November 26, 1979.

See: 10 N.J.R. 499(a), 12 N.J.R. 44(b).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a), substituted "Real Estate Sales Full Disclosure Act" for "Land Sales Disclosure Act" and changed an N.J.S.A. reference in 1, and changed N.J.A.C. reference in 2; and deleted a former (b).

11:5-6.7 Disclosures by licensees providing mortgage financing services to buyers for a fee

(a) Every real estate licensee who provides mortgage financing services to buyers must provide written disclosure to the buyer/borrower and to the seller as required in this rule as a condition to receiving, in addition to a share of the brokerage commission on the sale, any compensation, reimbursement or thing of value from the buyer, or any other source. These disclosures are required whenever the real estate brokerage agency, any division therein, or any individual licensed or employed by the agency will receive compensation or reimbursement for providing mortgage financing services related to the sales transaction, even if that particular division or individual will not share in the sales commission. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-5.4. The broker shall maintain records of such related mortgage transactions which shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-5.5.

(b) The licensee must provide written disclosure as required by (a) above to the buyer/borrower before charging or accepting or contracting for any fees for mortgage financing services and providing such services other than prequalification. The written disclosure to the buyer must include the following information:

1. The amount of all fees which the buyer will be expected to pay to the licensee for mortgage services, and whether and under what circumstances such fees are refundable;

2. The amount and source of any compensation or reimbursement which the licensee will receive for providing mortgage financing services to the buyer;

3. Where the licensee takes applications for or places loans exclusively with any three or fewer lenders, or is affiliated with any lender or mortgage broker as defined in N.J.A.C. 11:5-6.8, the disclosure must advise the buyer of that fact, give the names of such lenders and state:

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OFFERED BY THIS REAL ESTATE LICENSE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

4. Where the licensee or agency is also representing the seller in the sales transaction, the disclosure to the buyer/borrower must include the statement set forth in (e) below.

(c) Real estate licensees who are dually licensed as mortgage bankers or brokers may combine the disclosures to buyers required in this rule with the written disclosure to borrowers required by the Department of Banking and Insurance pursuant to its rules mandating such disclosures.

(d) A listing broker who represents only the seller and who offers to provide mortgage financing services to buyers for compensation or reimbursement shall provide written disclosure to the seller by including the following statement in the listing agreement. A selling broker who represents only the seller as subagent of the listing broker, and who offers to provide mortgage financing services to buyers for compensation or reimbursement, shall provide the following disclosure statement to the seller, with a copy to the listing broker, at the time any written offer is presented.

THIS REAL ESTATE AGENCY MAY OFFER TO PROVIDE MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN ADDITION TO THE SALES COMMISSION. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO YOU, THE SELLER, WHICH WILL NOT CHANGE SHOULD MORTGAGE FINANCING SERVICES BE PROVIDED. IN THE EVENT THAT MORTGAGE FINANCING SERVICES ARE PROVIDED TO THE BUYER, THIS AGENCY SHALL NOT UNDERTAKE REPRESENTATION OF THE BUYER IN THIS REAL ESTATE SALE.

(e) Where the licensee or agency does provide mortgage financing services to the buyer for compensation or reimbursement and also represents only the seller in the sales transaction, the following statement must be included in the written disclosure to the buyer required by (b) or (c) above. The licensee or agency must also promptly send or deliver the following written disclosure statement to the seller, with a copy to the listing broker, at the time a mortgage application is submitted on behalf of the buyer/borrower.

(name of licensee and brokerage agency)
REPRESENTS THE SELLER IN THE REAL ESTATE SALES TRANSACTION. UPON CLOSING OF TITLE, THIS REAL ESTATE AGENCY WILL RECEIVE A SALES COMMISSION FOR REPRESENTING THE SELLER. THIS REAL ESTATE AGENCY ALSO PROVIDES MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN THE AMOUNT OF _ AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO THE SELLER WHICH IS NOT CHANGED BY PROVIDING MORTGAGE SERVICES TO THE BUYER. THIS AGENCY DOES NOT REPRESENT THE BUYER IN THIS REAL ESTATE SALE.

Where the precise amount of the compensation to the licensee or agency for providing mortgage services has not yet been established, the maximum estimated amount of compensation should be included in this disclosure. The compensation received by the licensee may not be increased above the amount disclosed here without written notice to both parties, with a copy to the listing broker.

New Rule, R.1992 d.232, effective June 1, 1992.
 See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Rewrote (c); in (b), (d), and (e), deleted references to stylistic requirements; and changed N.J.A.C. references throughout the section.

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than \$250 for providing mortgage-related services was consistent with statute. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-6.8 Disclosure of licensee's affiliation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) Whenever a real estate licensee refers a buyer/borrower to a mortgage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer. This disclosure must be made even though the licensee will receive no fees or compensation for the referral, see N.J.A.C. 11:5-7.2, and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing. The disclosure must include the following statement:

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OF _____ WHO/WHICH IS AFFILIATED WITH THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

(b) For the purposes of this rule, a real estate licensee is considered to be affiliated with a mortgage lender or mortgage broker when:

1. The licensee, or the licensee's spouse, parent or child, is an officer, director or employee of the lender or mortgage broker, or works as a solicitor for the lender or mortgage broker;
2. The licensee, either alone or with spouse, parent or child, owns more than one percent of the lender or mortgage broker; the licensee is more than one percent owned by the lender or mortgage broker; or the licensee owns more than one percent or is more than one percent owned by a corporate parent, holding company or other business entity which is a majority shareholder in the lender or mortgage broker;
3. The licensee is a franchisee of a franchiser which owns more than one percent of the lender or mortgage broker or the licensee itself is the franchiser or franchisee of a mortgage lending franchise; or
4. The licensee shares office space or other facilities, or staff, with the lender or mortgage broker.

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. Where an office manager has such an individual affiliation, the manager and all licensees working under his or her supervision must provide the disclosure to all buyers referred to the affiliate by that office.
2. Where a salesperson or broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) The disclosure required by this section may be combined with the disclosure of affiliation required under RES-PA, 12 U.S.C. §§ 2601 et seq. Copies of all written disclosures required by this rule must be retained by the broker as business records available for inspection pursuant to N.J.A.C. 11:5-5.4 and 5.5.

New Rule, R.1992 d.232, effective June 1, 1992.

See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (a) and (d), changed N.J.A.C. references; and in (a), deleted a reference to stylistic requirements in the introductory paragraph.

Case Notes

Requiring real estate brokers give vendors and purchasers notice and disclosure and accept no more than \$250 for providing mortgage-related services was consistent with statute. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-6.9 Consumer Information Statement

(a) When applied to rental transactions which are not exempt from this rule, references to sellers and buyers, and to the various types of brokerage agreements and business relationships mentioned throughout this rule should be construed as indicating their appropriate counterparts in rental transactions. For example, references to sellers should be read as lessors or owners and references to buyers should be read as lessees or tenants, etc. As used in this rule, the following terms or phrases shall have the following meanings:

1. "Brokerage agreement" means a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.
2. "Brokerage firm" means a licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.

3. "Consumer Information Statement" means the Consumer Information Statement on New Jersey Real Estate Relationships as prescribed in (h) below.

4. "Informed consent to dual agency" means the written authorization by a party for the brokerage firm which represents them as their agent in a real estate transaction to also represent the other party to that transaction as an agent. Informed consent can only be obtained after the brokerage firm has disclosed to the consenting party all material facts which might reasonably impact on that party's decision to authorize dual agency, including the extent of the conflicts of interests involved and the specific ways in which each consenting party will receive less than full agency representation from the dual agent. In order to obtain informed consent it is also necessary for the licensee to first advise the consenting party of the other business relationships offered by that licensee and of those not offered by that licensee, and of that party's right to consult an attorney.

ii. The requirement to include the clause cited in (j)3i above in licensee-prepared offers, contracts and leases shall not apply with respect to firms whose involvement in a transaction was limited to merely referring a party to another firm.

(k) Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:

1. In all written or computer generated notices directed to other brokerage firms through a Multiple Listing Service or otherwise, the listing broker shall indicate whether they are working as a seller's agent or as a transaction broker. On listings where the listing broker is operating as a seller's agent, such notices shall also state:

- i. Whether subagency is offered;
- ii. Whether the seller has authorized the sharing of the listing broker's compensation with cooperating sub-agents and/or transaction brokers and/or buyer brokers; and
- iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker's firm shall also be responded to as set forth in this subsection.

(l) In transactions where brokers seek compensation for their brokerage services from a party to the transaction whom they are not representing or working with, the business relationship with the party they are representing or working with and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-7.1.

(m) Notwithstanding anything appearing in (g) and (h) above to the contrary, where a brokerage firm is itself the owner of the property being sold by individuals licensed through the broker-owner of the property, a Consumer Information Statement, revised as provided in this section, shall be delivered to prospective purchasers in accordance with the provisions of this rule.

1. On the line immediately below the title of the Consumer Information Statement, the following text shall appear in print larger than the predominant size print in the writing:

As the holder of a New Jersey real estate license, I am required by law to inform you how I will operate in this

transaction, should you pursue it, and to provide this statement to you.

My employer is the owner of the property(s) in which you have expressed an interest. For the purposes of its business relationship disclosure rules, the New Jersey Real Estate Commission deems brokers selling property they own and licensees employed or retained by such broker-owners to be operating as seller's agents when they sell property owned by the broker. The statements which follow with regard to licensees who act as sellers' agents apply to me and other persons employed or retained by the owner, particularly those statements concerning the obligation of sellers' agents to pass on to the sellers all material information they obtain with regard to the buyers' ability to pay.

New Rule, R.1995 d.110, effective February 21, 1995 (operative July 1, 1995).

See: 26 N.J.R. 3113(a), 27 N.J.R. 697(a).

Administrative corrections.

See: 27 N.J.R. 1191(a); 27 N.J.R. 1618(b).

Public Notice: Petition for rulemaking; Agency disclosure.

See: 27 N.J.R. 5058(b).

Public Notice: Notice of action on petition for rulemaking.

See: 28 N.J.R. 1412(d).

Public Notice: Notice of Action on Petition for Rulemaking.

See: 29 N.J.R. 385(a).

Amended by R.1998 d.245, effective May 18, 1998.

See: 29 N.J.R. 1663(b), 30 N.J.R. 1829(a).

Rewrote (a)6; in (e), rewrote liii, 2iii and inserted a new iv; in (h), amended the "Consumer Information Statement"; and in (j), amended the "declaration of business relationship" document and added a new (m).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (g), (j) and (l), changed N.J.A.C. references.

Public Notice: Notice of Action on Petition for Rulemaking.

See: 38 N.J.R. 2533(a), 38 N.J.R. 3672(a).

Case Notes

Builder-developer of residential real estate or broker representing it may be liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property. *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995).

SUBCHAPTER 7. PROHIBITED ACTIVITIES

11:5-7.1 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) Real estate licensees are prohibited from receiving compensation from both a seller and a buyer for representing both seller and buyer in the same real estate sales transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(b) Real estate licensees are prohibited from receiving compensation from both a landlord and a tenant for representing both the landlord and the tenant in the same rental transaction. This prohibition applies even when the dual

agency has been fully disclosed by the licensee to both parties.

(c) Within the meaning of this section, the phrases “sales transaction” and “rental transaction” do not include any related transactions whether or not they are contingencies in the contract or lease. For example, where there is a mortgage contingency in a contract of sale, the mortgage loan is a related transaction between the buyer and lender; it is not the same transaction as the sale.

(d) A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that where a licensee prepares a contract or lease full written disclosure of the agency relationship and of the compensation arrangement is made to both parties to the transaction in the contract or lease. Where a licensee does not prepare the contract or lease, but seeks compensation from a party whom he or she does not represent, that licensee’s agency relationship and proposed compensation arrangement shall be disclosed to all parties in a separate writing prior to execution of the contract or lease.

(e) A licensee who represents any party to a sale or rental transaction may receive compensation from either party for providing actual services in related transactions, provided that the licensee discloses the related services, sources and amounts of compensation in writing to the parties to the sale or rental transaction. Where the related services to be provided by the licensee are mortgage financing services provided to the buyer for compensation or reimbursement, the written disclosures must comply with N.J.A.C. 11:5-6.7. The broker shall maintain records of such related transactions including all required written disclosures, which records shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-5.5.

(f) Except as provided in (g) below, when providing mortgage financing services related to the purchase or sale of a one to six family residential dwelling, a portion of which may be used for non-residential purposes, located in New Jersey:

1. A real estate broker shall not solicit or receive compensation or reimbursement pursuant to (e) above greater than the expense amount permitted at closing by rule of the Department of Banking and Insurance unless licensed as a mortgage broker or mortgage banker by the Department of Banking and Insurance pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.; and

2. A real estate salesperson or broker-salesperson shall not solicit or receive any compensation or reimbursement pursuant to (e) above from any person other than his or her employing real estate broker unless licensed as a mortgage broker or mortgage banker by the Department of Banking and Insurance pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.

(g) Any real estate licensee who is individually employed as a mortgage solicitor by a licensed mortgage banker or mortgage broker and registered in compliance with applicable law and the rules of the Department of Banking and Insurance may solicit and accept compensation from his or her licensed mortgage employer for providing mortgage services in residential mortgage transactions.

New Rule, R.1992 d.232, effective June 1, 1992.

See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).

Amended by R.1992 d.468, effective November 16, 1992.

See: 24 N.J.R. 1957(a), 24 N.J.R. 2129(a), 24 N.J.R. 4268(a).

Added (f), limiting solicitation and receipt of compensation for mortgage financing services to \$250.00; and (g), permitting solicitation of mortgage banker or broker by real estate licensee who is also employed as a mortgage solicitor by said banker or broker.

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (e), changed N.J.A.C. references; and rewrote (f) and (g).

11:5-7.2 Prohibition against kickbacks for related business referrals

(a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-7.1(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be in compliance with this subsection.

(b) Real estate brokers are prohibited from offering incentives to the salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral. For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to salespersons for merely referring buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.

New Rule, R.1992 d.232, effective June 1, 1992.
 See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 In (a), changed N.J.A.C. reference.

Case Notes

Requiring real estate brokerage offices to be Mortgage Bankers and Brokers Act licensee branches was arbitrary. *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Com'n*, 283 N.J.Super. 233, 661 A.2d 832 (A.D.1995).

11:5-7.3 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Real estate brokers who provide mortgage financing services to buyer/borrowers in-house, whether through computerized loan origination systems, or affiliated lenders or affiliated mortgage brokers, etc., are prohibited from limiting buyer's choices by denying outside lenders reasonable access to solicit mortgage loans in their real estate offices. Reasonable access will be presumed where three or more outside, non-affiliated lenders are permitted to send solicitors into the real estate office during business hours to contact salespersons. The reasonableness of the broker's overall office policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will also be considered. In no event shall this rule be interpreted to require any real estate broker to permit any one specific lender to solicit loans inside the real estate office or to require the real estate broker to set aside any particular space or facilities inside the real estate office for the use of outside mortgage solicitors.

New Rule, R.1992 d.232, effective June 1, 1992.
 See: 23 N.J.R. 3424(b), 24 N.J.R. 2058(b).
 Public Notice: Petition for Rulemaking.
 See: 28 N.J.R. 1412(c).
 Public Notice: Action on petition for rulemaking.
 See: 28 N.J.R. 2414(a).
 Public Notice: Action on petition for rulemaking.
 See: 28 N.J.R. 4816(a).

11:5-7.4 Blockbusting; solicitation

(a) No broker or salesman shall affirmatively solicit the sale, lease or the listing for sale or lease of residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, religion or ethnic origin, nor shall distribute, or cause to be distributed, material, or make statements designed to include a residential property owner to sell or lease his property due to such change in the neighborhood.

(b) Every real estate broker who, in a personal meeting, solicits the sale, lease or the listing for sale or lease of three or more residential properties fronting on either side of any street between intersecting or cross streets or between a cul-de-sac or other like termination point and an intersecting or cross street within the same month, whether directly or through personal meetings attended by his or her salesper-

sons, shall maintain a permanent record for at least one year from the date of said solicitation, which shall be available for inspection by the Commission or any representative thereof upon request, setting forth the name and address of each person so solicited, the address of the property involved, the name of the licensee actually making such solicitation, and the date upon which the solicitation took place. At the request of the Commission or any representative thereof, any such broker shall file with the Commission a copy of the permanent record, or a statement containing the same information as set forth in the permanent record. Such filing shall be made with the Commission no later than ten days following the request therefore.

As amended, R.1972 d.127, effective June 28, 1972.
 See: 4 N.J.R. 71(a).
 Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (b), substituted "who, in a personal meeting, solicits" for "soliciting" and "personal meetings attended by his or her salespersons," for "his salesman," in the first sentence; and deleted a former (c).

11:5-7.5 Proscription of price-fixing and agreements in regard to methods of arriving at commission

(a) No licensee shall combine, conspire, suggest, or recommend to, or with any other licensee(s) that any rate, commission or fee to be charged by them, or any division of such commission by them be fixed, established, maintained, suggested or stabilized. Nothing in this section shall prohibit any intra-office communications with regard to the establishment of commissions or division of commissions.

(b) No licensee shall directly or indirectly recommend or suggest to any other licensee(s) that such person(s) adhere to any schedule or recommendation of another concerning the rates, commissions or fees to be charged or the methodology or approach by which a commission, rate or fee is arrived at, or division of fees to be made, in the conduct of business. Nothing in this section shall prohibit any intra-office communications with regard to the establishment of commissions or division of commissions. Information imparted solely for the purposes of instruction, and not for the purpose of recommending guidelines or a preferred method of pricing, at any bona fide trade association seminar or educational courses shall be excepted from the proscription set forth in this section.

New Rule, R.1981 d.261, effective July 9, 1981.
 See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

11:5-7.6 Proscription of certain discriminatory commission splits

No licensee shall directly or indirectly take any punitive or retaliatory action against any other licensee(s) where such action is based upon the failure or refusal to adhere or to adopt any commission. No licensee shall adopt a discriminatory commission split against another broker because of such other broker's failure or refusal to adhere to or adopt any commission; if a listing broker varies his commission split policy with any selling broker on a cooperative sale, the

listing broker shall maintain a file at his place of business which shall contain in writing an explanation for the variation and which reflects who made the decision and why it was made. Nothing in this section shall prohibit a listing broker from varying his commission split policy with respect to any one or more selling brokers in order to achieve equality of commission splits with such other selling broker or brokers in connection with their commission split policy with such listing broker.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

11:5-7.7 Proscription on pressuring media

No licensee shall agree, combine or conspire with another to boycott, or threaten to boycott, or refuse to do business with any promotional medium where such refusal or boycott is based on the acceptance by any medium of advertising of price or commissions of a competitive or discount nature.

New Rule, R.1981 d.261, effective July 9, 1981.
See: 13 N.J.R. 306(a), 13 N.J.R. 440(c).

SUBCHAPTER 8. DISCIPLINARY ACTIONS/CONDITIONS FOR RESTORATION OF LICENSE/REAL ESTATE GUARANTY FUND CLAIMS

11:5-8.1 Disciplinary action; restitution

(a) Violation of any of these rules and regulations, or of any real estate statute, shall be sufficient cause for any disciplinary action permitted by statute.

(b) In accordance with the provisions of N.J.S.A. 45:15-9 and N.J.S.A. 45:15-17, the Commission, in appropriate circumstances, will exercise its authority to impose restitution of moneys owed others as a condition to the issuance of a license or to the reinstatement of a license after revocation or suspension.

(c) The Commission may, where the nature of the offense so warrants, impose as a condition to any future license restoration, the successful accomplishment of a written examination of the same type normally given to applicants for initial licenses.

As amended, R.1977 d.392, effective October 19, 1977.
See: 9 N.J.R. 438(a), 9 N.J.R. 536(b).
As amended, R.1983 d.471, effective November 7, 1983.
See: 15 N.J.R. 1343(a), 15 N.J.R. 1865(c).
Added (c).

Case Notes

Broker's disclosure to Real Estate Commission of appellate court's decision that competing broker had tortiously interfered with exclusive contract and with prospective economic advantage implicated the public interest so as to be protected by Conscientious Employee Protection Act. *Barratt v. Cushman & Wakefield of New Jersey, Inc.*, 144 N.J. 120, 675 A.2d 1094 (1996).

Real estate salesperson's license revoked due to acceptance of commissions from people other than the employing broker. *New Jersey Real Estate Commission v. Neumerski*, 97 N.J.A.R.2d (REC) 48.

Real estate license revoked due to broker's failure to supply records and comply with subpoena. *New Jersey Real Estate Commission v. Federico T/A United Coast Realty*, 97 N.J.A.R.2d (REC) 46.

False information on real estate license application justifies license revocation. *New Jersey Real Estate Commission v. Torres, Ruiz and Signature Properties, Inc.*, 97 N.J.A.R.2d (REC) 44.

Revoked insurance producer licensee loses real estate salesperson license after accepting auto insurance premiums and failing to remit. *New Jersey Real Estate Commission v. Mohamd*, 97 N.J.A.R.2d (REC) 41.

Former brokerage licensee's continuance of licensed activities warrants lifetime licensure revocation. *New Jersey Real Estate Commission v. Brown*, 97 N.J.A.R.2d (REC) 39.

Real estate salespersons sanctioned for failure to pay taxes. *New Jersey Real Estate Commission v. Ansell*, 97 N.J.A.R.2d (REC) 33.

Real estate broker sanctioned for trust account violations. *New Jersey Real Estate Commission v. Fayad*, 97 N.J.A.R.2d (REC) 31.

Real estate salesperson sanctioned for failure to disclose criminal indictment. *New Jersey Real Estate Commission v. Mitchko*, 97 N.J.A.R.2d (REC) 29.

Real estate salesperson sanctioned for misrepresentations on licensure application. *New Jersey Real Estate Commission v. Apsaform*, 97 N.J.A.R.2d (REC) 27.

Insufficient evidence to suspend broker's license pending trial on fraud charges. *New Jersey Real Estate Commission v. Sourlis*, 97 N.J.A.R.2d (REC) 26.

Real estate salesperson sanctioned for fraud and misrepresentations. *New Jersey Real Estate Commission v. Iezzi*, 97 N.J.A.R.2d (REC) 23.

Real estate salesperson sanctioned for accepting deposit without authorization of broker. *New Jersey Real Estate Commission v. Guzman*, 97 N.J.A.R.2d (REC) 21.

No sanctions imposed against agent when evidence did not establish she had submitted falsified documents. *New Jersey Real Estate Commission v. Ross*, 97 N.J.A.R.2d (REC) 11.

Licensed real estate salesperson's deceit in course of REC investigation was deemed not sufficiently material to set aside settlement reached in matter. *Real Estate Commission v. Mosseri*, 96 N.J.A.R.2d (REC) 39.

Broker's license was revoked for failure to disclose pending criminal charges. *New Jersey Real Estate Commission v. Diaz*, 96 N.J.A.R.2d (REC) 35.

Broker's license was properly revoked for misconduct as insurance producer. *New Jersey Real Estate Commission v. Lopez*, 96 N.J.A.R.2d (REC) 31.

Formerly licensed agent engaging in real estate transactions was fined and penalized for sales activities. *New Jersey Real Estate Commission v. Abad*, 96 N.J.A.R.2d (REC) 26.

Real estate salesperson's failure to respond honestly to application question concerning prior professional license revocation justified revocation of salesperson's license. *New Jersey Real Estate Commission v. Rolston*, 96 N.J.A.R.2d (REC) 24.

Theft conviction supported revocation of real estate salesperson's license, even where conviction was unrelated to license. *New Jersey Real Estate Commission v. Kanoff*, 96 N.J.A.R.2d (REC) 23.

Real estate salesperson's license on probation for failure to disclose prior felony conviction. *New Jersey Real Estate Commission v. Irizarry*, 96 N.J.A.R.2d (REC) 17.

Licensed real estate salesperson's failure to disclose prior convictions justifies license suspension. New Jersey Real Estate Commission, 96 N.J.A.R.2d (REC) 16.

Real estate salesperson fined and permanently barred from licensure for unlicensed transactions and falsifying license. New Jersey Real Estate Commission v. Fernandes, 96 N.J.A.R.2d (REC) 11.

Real estate license revoked where salesperson impersonates broker during agency inspection. New Jersey Real Estate Commission v. Cron, 96 N.J.A.R.2d (REC) 8.

Pending criminal theft charges involving insurance license justify denial of real estate license. New Jersey Real Estate Commission v. Nelson, 96 N.J.A.R.2d (REC) 7.

Working as real estate broker after license expired and while conducting fraudulent activities compels permanent ban from licensure. New Jersey Real Estate Commission v. Pinilis, 96 N.J.A.R.2d (REC) 1.

Real estate brokers suspended and fined; failure to maintain accounts. New Jersey Real Estate Commission v. Bailey, 94 N.J.A.R.2d (REC) 33.

Criminal conviction did not warrant revocation of broker-salesperson license. Real Estate Commission of New Jersey v. McLeod, 94 N.J.A.R.2d (REC) 29.

Revocation of real estate license and assessment of penalties were appropriate. New Jersey Real Estate Commission v. Sabia, 94 N.J.A.R.2d (REC) 23.

Real estate broker license placed on probation and fine imposed. Real Estate Commission v. Zappia, 94 N.J.A.R.2d (REC) 11.

Six-month suspension and imposition of penalty was justified. New Jersey Real Estate Commission v. Donnon, 94 N.J.A.R.2d (REC) 1.

Making false representation as being owner of real estate brokerage, collecting commission from person other than employing broker, and commingling of funds; revocation of salespersons' licenses and imposition of fines. New Jersey Real Estate Commission v. Ballman, 93 N.J.A.R.2d (REC) 17.

Commingling of funds, accounting failures, as well as other violations, warranted permanent revocation of broker/salesperson license and imposition of fine. New Jersey Real Estate Commission v. Duffy, 93 N.J.A.R.2d (REC) 13.

Failure to file income tax return; broker/salesperson license revoked. New Jersey Real Estate Commission v. McLeod, 93 N.J.A.R.2d (REC) 9.

Developer's failure to submit annual reports; registration revoked, fine imposed, order to cease and desist marketing of project issued. New Jersey Real Estate Commission v. Cepco, Inc. 92 N.J.A.R.2d (REC) 49.

Failure to account for deposit monies, commingling of funds, and engaging in business without license; salesperson's license revoked and fine imposed. New Jersey Real Estate Commission v. Groff. 92 N.J.A.R.2d (REC) 31.

Salesperson's failure to file answer to order to show cause or to make appearance before New Jersey Real Estate Commission warranted license suspension. New Jersey Real Estate Commission v. Grennor. 92 N.J.A.R.2d (REC) 29.

Salesperson procured real estate license by fraud, misrepresentation and deceit by failing to reveal having pled guilty to charge one week before executing application and licensing form; suspension and fine. New Jersey Real Estate Commission v. Cordaro. 92 N.J.A.R.2d (REC) 17.

Failure to disclose convictions; salesperson's license suspended. New Jersey Real Estate Commission v. Fields. 92 N.J.A.R.2d (REC) 15.

Criminal convictions warranted revocation of real estate salesperson's license. New Jersey Real Estate Commission v. Szatkowski. 92 N.J.A.R.2d (REC) 13.

Federal conspiracy to falsify claims and statements and of fraud warranted salesperson's license revocation. New Jersey Real Estate Commission v. Lanza. 92 N.J.A.R.2d (REC) 5.

Theft conviction warranted two-year revocation of salesperson's license. New Jersey Real Estate Commission v. Rosko. 92 N.J.A.R.2d (REC) 2.

False voter registration and tampering with public records convictions warranted suspension of real estate salesperson's license. New Jersey Real Estate Commission v. Federico. 92 N.J.A.R.2d (REC) 1.

11:5-8.2 Real estate guaranty fund

(a) Every licensed real estate broker and licensed broker-salesperson shall pay an additional amount as specified in N.J.S.A. 45:15-35 and every licensed real estate salesperson shall pay an additional amount as specified in N.J.S.A. 45:15-35 with their application for license renewal next following January 1, 1993.

1. Said fees shall be paid into the real estate guaranty fund and be utilized in accordance with N.J.S.A. 45:15-34 et seq.

(b) Before making a request for the entry of a court order directing payment from the real estate guaranty fund, a judgment credit shall have a writ of execution issued and prior to its return shall make a bona fide effort to examine the judgment debtor under oath and make any and all other reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment in whole or in part. Information regarding any personal or real property or other assets liable to be sold or applied in satisfaction of the judgment which are discovered must be reported in writing to the officer to whom the writ of execution is directed.

New Rule, R.1981 d.252, effective July 9, 1981.

See: 13 N.J.R. 306(a), 13 N.J.R. 441(a).

Amended by R.1991 d.114, effective March 4, 1991.

See: 22 N.J.R. 3688(a), 23 N.J.R. 701(a).

Imposed special assessment on license renewals after January 1, 1991.

Amended by R.1993 d.153, effective April 5, 1993.

See: 25 N.J.R. 56(b), 25 N.J.R. 1548(a).

In (a), specified assessment amounts established by N.J.S.A. 45:15-35.

SUBCHAPTER 9. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

11:5-9.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Real Estate Commission (hereinafter, the Commission) to implement the provisions of the Real Estate Sales Full Disclosure Act (hereinafter, the Act), N.J.S.A. 45:15-16.27 et seq. These rules are applicable to all appli-

cations and matters pertaining to and/or effected by the provisions of this Act.

(b) All registration and exemption applications and all correspondence and inquiries should be directed to: New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control, 20 West State Street, PO Box 328, Trenton, New Jersey 08625-0328.

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

In (b), updated the address at the end.

11:5-9.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Advertising” means the publication or causing to be published, of any information offering for sale or for the purpose of causing or inducing any other person to purchase or acquire, an interest in the title to subdivided lands, including the sales contract to be used and any photographs or drawings or artist’s representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written or printed or photographic matter produced by any duplicating process producing 10 copies or more;
4. Billboards or signs;
5. Display of model homes or units;
6. Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means; or
7. Material used by subdividers or their agents to induce prospective purchasers to visit the subdivision; particularly vacation certificates which require the holders of those certificates to attend or submit to a sales presentation by a subdivider or its agents.

“Advertising” does not mean: stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, or similar documents, prospectuses, property reports, offering statements or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider’s lands except when directed to the sale of additional lands.

“Applicant” means a person who or entity which has applied for the registration of real property of interests therein with the Commission pursuant to the Act or for a total or limited exemption from those registration requirements.

“Blanket encumbrance” means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell, or a trust agreement affecting a subdivision or affecting more than one lot offered within a subdivision, except that term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

“Broker” or “salesperson” means any person who performs within this State as an agent or employee of a subdivider any one or more of the services or acts as set forth in this Act, and includes any real estate broker or salesperson licensed pursuant to N.J.S.A. 45:15-1 et seq. or any person who purports to act in any such capacity.

“Broker’s Release” means the document issued by the Commission affirming that the broker to whom it is issued has been approved by the Commission as the designated New Jersey broker of record or as a supplemental broker of a registrant, and has been authorized by the Commission to commence solicitation and sales efforts on behalf of that registrant in New Jersey.

“Commission” means the New Jersey Real Estate Commission.

“Common promotional plan” means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where those lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name regardless of the number of lots, parcels, units or interests covered by each individual offering.

“Deed in trust” means a written instrument, in recordable form and conforming to all applicable laws of the situs state, under the terms of which title to a property passes to a trustee who is independent of and unaffiliated with the applicant/registrant, and which title is to be held by that trustee on behalf of the purchaser pursuant to a trust agreement or equivalent instrument between the registrant and the trustee obligating the trustee to convey title to the purchaser promptly upon the purchaser’s fulfillment of their obligations under an installment contract for the purchase of such property by the purchaser from the registrant.

“Disposition” means the sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision if undertaken for gain or profit.

Amended by R.1997 d.161, effective April 7, 1997 (operative July 1, 1997).

See: 29 N.J.R. 303(a), 29 N.J.R. 1325(a).

Added (i).

Amended by R.1998 d.497, effective October 5, 1998.

See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Rewrote the section.

Amended by R.2009 d.222, effective July 6, 2009.

See: 40 N.J.R. 3944(a), 41 N.J.R. 2663(a).

In (e)6, substituted "condominium or other interest in real estate that is subject to the authority of or to assessments by a" for "condominium, time-share or".

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

11:5-9.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) The applicant shall designate a currently licensed New Jersey real estate broker as its original broker of record with the initial application for registration, and such broker and any substituted or supplemental brokers must comply with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and the rules promulgated thereunder. An applicant/registrant may substitute another broker for the one initially designated. The initially designated broker and all substituted brokers shall execute an affidavit in accordance with N.J.A.C. 11:5-9.4(a)1.

1. The applicant may designate, in addition to the broker of record, other brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-9.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker in any transaction, in accordance with N.J.A.C. 11:5-6.4(c). For the purposes of this section, persons who are licensed as New Jersey real estate brokers, and who have been designated by the applicant/registrant and approved by the Commission as the broker of record or as a supplemental broker for a particular subdivision, and who have been issued a current brokers release for that subdivision, are considered authorized brokers.

(b) Only authorized brokers may receive commissions from the registrant for the sale of interests in registered properties within New Jersey.

(c) Only authorized brokers and persons licensed under them may distribute literature on, or personally or via telephone solicit for prospective purchasers or offer or attempt to negotiate the sale or rental of an interest in a registered property, or provide or prepare contracts in New Jersey pertaining to registered property.

1. Where permitted by local law, unlicensed employees of a registrant working in the situs state and/or from the offices of the registrant may mail to New Jersey purchasers promotional literature on registered properties and may make appointments for New Jersey purchasers to inspect registered properties, provided that such persons make no material representations about such properties.

2. An authorized broker or a person licensed under them shall be present at any promotional booth maintained by a registrant or an agent of a registrant at any trade show or similar exhibition in New Jersey, and at any seminar promoting the sale or rental of registered property conducted by a registrant or any agent of a registrant in this State.

(d) All authorized brokers shall:

1. Prominently display the current broker's release;
2. Provide a copy of the current New Jersey Public Offering Statement to all New Jersey purchasers with whom they have had contact prior to the signing of any contract;
3. Obtain a signed and dated receipt for the same from the purchaser in all cases where the broker provides the Public Offering Statement to the purchaser, which receipt shall be maintained as a business record by the broker in accordance with N.J.A.C. 11:5-5.4; and
4. In all cases where the broker provides or prepares a contract which is signed by a New Jersey purchaser, the

broker shall maintain a copy of that contract as a business record in accordance with N.J.A.C. 11:5-5.4.

(e) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-9.18.

Amended by R.1998 d.497, effective October 5, 1998.
See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).

Deleted former (e); recodified former (f) as (e); and changed N.J.A.C. references throughout the section.

Case Notes

New Jersey Land Sales Full Disclosure Act discriminated in its plain effect against interstate commerce and violated dormant commerce clause. *Old Coach Development Corp., Inc. v. Tanzman, C.A.3 (N.J.)1989, 881 F.2d 1227.*

11:5-9.7 Fees with respect to the sale of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34 and in (f) below.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-9.18 and in (f) below.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of \$250.00. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

1. If applications for approval of a material change in and/or for an amendment to an Order of Registration and/or an amendment to a Public Offering Statement are made simultaneously, only one fee will be payable;

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an Order of Registration, and/or multiple amendments to a Public Offering Statement simultaneously, only one fee will be payable.

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost in accordance with the copying fees set forth in N.J.S.A. 47:1A-5(b).

(e) All fees paid are non-refundable.

(f) Fees charged by the Bureau of Subdivided Land Sales Control are listed in the table below.

BUREAU OF SUBDIVIDED LAND SALES CONTROL FEES

<u>Description</u>	<u>Fee</u>
Out-of-State Property Registration application fee	\$500.00 plus \$35.00 per unit fee up to a maximum of \$3,000
Limited Exemption	\$250.00
Complete Exemption	\$80.00
Amendments to registrations	\$250.00

Amended by R.1998 d.497, effective October 5, 1998.
 See: 30 N.J.R. 2333(a), 30 N.J.R. 3646(a).
 In (b), changed N.J.A.C. reference; and in (c), deleted former 3.
 Amended by R.2003 d.440, effective November 3, 2003.
 See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
 In (d)1, inserted N.J.A.C. reference; added (f).
 Amended by R.2004 d.130, effective April 5, 2004.
 See: 35 N.J.R. 4812(a), 36 N.J.R. 1780(a).
 In (d)1, substituted "in accordance with the copying fees set forth in N.J.S.A. 47:1A-5b" for "of \$0.50 per page" following "at a cost".

11:5-9.8 Issuance by the Commission of a Notice of Filing, Order of Registration, Notice of Correction, or Order of Rejection; Petition for Reconsideration, Automatic Registration

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

(b) Within 90 days from the date of a notice of filing, the Commission shall either enter an Order of Rejection or, if the Commission affirmatively determines that the requirements of N.J.S.A. 45:15-16.27 et seq. and this subchapter have been met, an Order of Registration. If within the said 90-day time period, no Order of Rejection is entered and no Notice of Deficiency as set forth in (c) below is issued, the subdivision or subdivided lands shall be deemed registered unless the applicant has consented in writing to a delay.

(c) If, during the 90 days following the date of the Notice of Filing, the Commission determines that any of the requirements of N.J.S.A. 45:15-16.27 et seq. or of this subchapter have not been met, the Commission shall issue a Notice of Deficiency to the applicant. The Notice of Deficiency shall indicate that the properties referenced in the application for registration are not registered and that the application must be corrected in a manner specified in the notice within 30 days from the date that the Notice of Deficiency is received by the applicant.

1. In the event the requirements of the Notice of Deficiency are not met within the time allowed, the Commission may enter an order rejecting the registration. All such orders shall include the factual and legal basis for the rejection and shall provide that, unless appealed, as provided in (d) below the terms of the order shall become final after 45 days.

(d) Upon the issuance of an Order of Rejection, the applicant shall have the right to file an appeal with the Commission and shall be entitled to a hearing thereon, provided that the appeal shall be filed within 45 days of the date of the Order of Rejection.

1. In the event an appeal is filed by the applicant, the Order of Rejection shall not take effect until such time as a determination has been rendered on the appeal. While an appeal of an Order of Rejection remains pending, no property which was the subject of the Notice of Filing referenced in the Order of Rejection shall be considered registered.

Amended by R.2003 d.440, effective November 3, 2003.
 See: 34 N.J.R. 4043(a), 35 N.J.R. 5109(a).
 Added (b) through (d).

11:5-9.9 Inspection of properties by the Commission

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

11:5-9.10 Amendments to registration applications and Public Offering Statements

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) Material change means, but is not limited to, any significant change in the size or character of the development or interest being offered or anything having a significant effect on the rights, duties or obligations of the developer or purchaser.